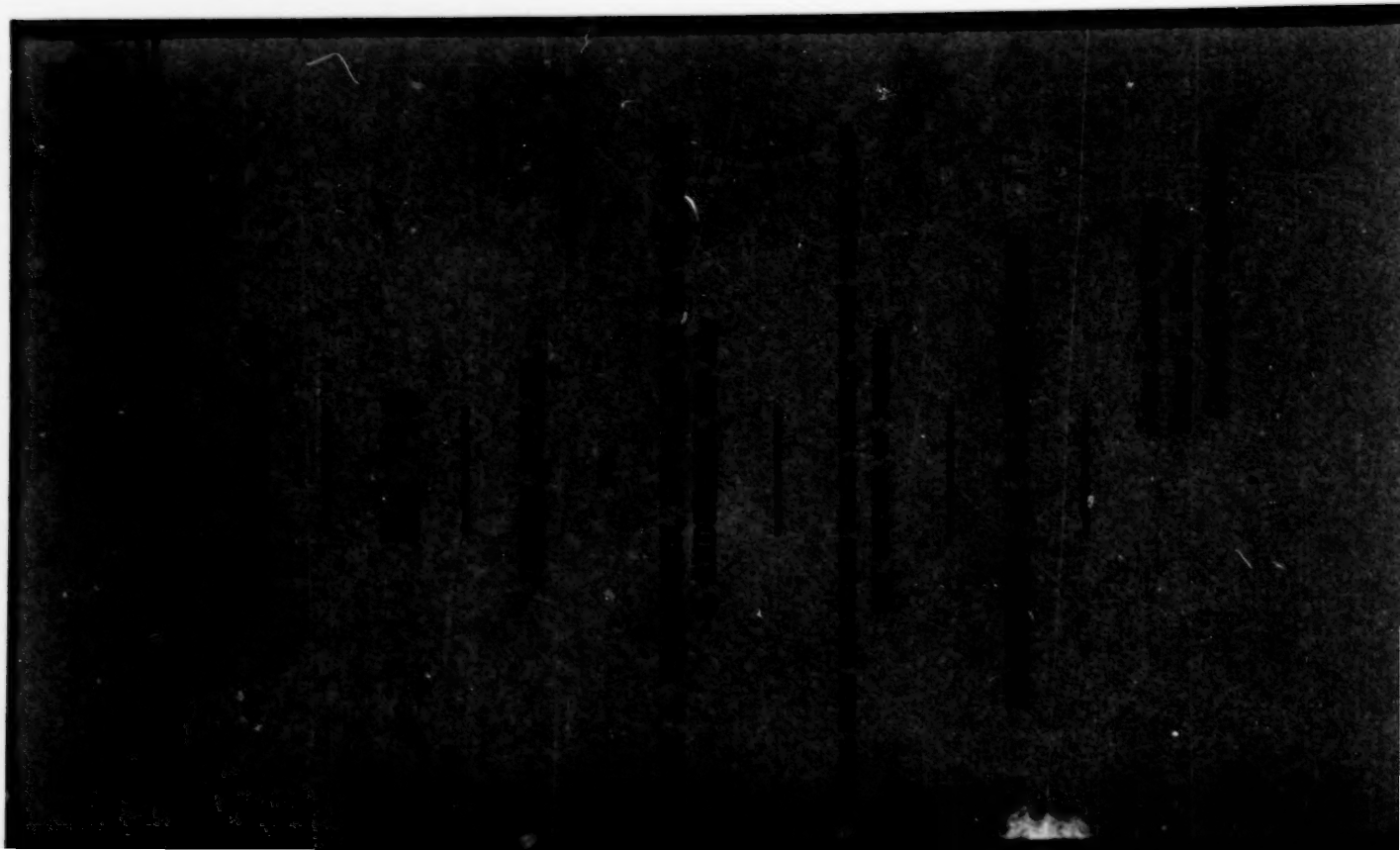

INDEX

Subject Index

	Page
Jurisdiction	1
Questions Presented	2
Statutes Involved	3
Statement	4
The Questions Are Substantial	6
Arguments under Assignments of Error	10
Conclusion	30

Table of Cases Cited

Butler v. *Thompson et al.*, 184 F. (2d) 526, 9,10, 14, 23, 23, 25, 26, 28, 29, 30
Davis v. *Schnell*, 81 F. Supp. 872, 880 ..... 6, 8, 9, 10, 22
Ex parte Commonwealth of Virginia, 100 U. S. 676 6, 11, 13
Guinn v. *United States*, 238 U. S. 347 ..... 6, 9, 10, 22, 23
Lane v. *Wilson*, 307 U. S. 268 ..... 6, 8, 9, 10, 22, 23
Mattox Steamboat Co. v. *Murphy*, 319 U. S. 412 2
Michael v. *Cockerell*, 161 F. (2d) 163 ..... 9, 10, 23
Myers v. *Anderson*, 238 U. S. 368 ..... 6, 9, 10, 22, 23
Rice v. *Elmore*, 4th Cir. 165 F. (2d) 387, 392 .... 6, 9, 10, 22
Smith v. *Allwright*, 321 U. S. 1031 6
Sterling v. *Constantin*, 287 U. S. 377 2
United States v. *Classic*, 313 U. S. 1031 ..... 6, 12
United States v. *Capital Transit Co.*, 325 U. S. 357 .. 2
United States v. *Detroit and Cleveland Navigation Company*, 326 U. S. 236 2
United States v. *Pierce Auto Freight Lines*, 327 U. S. 515 2
Yick Wo v. *Hopkins*, 118 U. S. 347 9

Constitutional and Statutory Provisions Cited

Constitution of United States, Seventh Amendment (Vol. II, O. S. 1931, p. 1611) 4
Constitution of United States, Article VI (Vol. II, O. S. 1931, p. 1608) 4, 13

188629

Page

Constitution of United States, Fourteenth Amendment (Vol. II, O. S. 1931, p. 1613) (Appendix C), 4, 8, 13, 23

Constitution of United States, Fifteenth Amendment (Vol. II, O. S. 1931, p. 1614) (Appendix 4), 4, 8, 10, 11, 12, 13, 23

Act of Congress Admitting Virginia to Representation in Congress (U. S. Statutes at Large 16, p. 62, 41st Congress, 1869-71) (Appendix G) 4

Constitution of Virginia of 1867, Article III, Sections 1 & 2, (Code of Virginia 1873, p. 8 & 9) (Appendix E) 4, 11

Constitution of Virginia, 1867, Article XII (Appendix F) 4

Code of Virginia of 1873, Chapter VII (p. 146, 147) (Appendix H) 4

Constitution of Virginia of 1902, Article II, Sections 18, 19, 21, 22, 23 (Vol. 9, Michie's Code of Virginia, 1950, p. 448-452) (Appendix I) 4, 23

Tax Code of Virginia, Chapter V, Section 22 (Tax Code Vol. 8, Michie's Code of Virginia, 1950; Constitution of Virginia, Sec. 173, Vol. 9, Michie's Code of Virginia, 1950, p. 542) (Appendix J) 4

United States Code, Title 8, Chapter 2, Section 31 (R.S. Sec 2004) 4, 12

United States Code, Title 8, Chapter 3, Section 43 (R. S. Sec. 1979) 4

United States Code, Title 28, Section 1253 (June 25, 1948, c. 646, 62 Stat. 926) 2, 3

United States Code, Title 28, Section 2101 (June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, Sec. 106, 63 Stat. 104) 2, 4

United States Code, Title 28, Section 2281 (June 25, 1948, c. 646, 62 Stat. 968 ..... 2, 3, 7

OTHER REFERENCES

Cooley, Constitutional Limitations (5th Ed.) p. 756 22

Census of the United States, 1940 25

Debates of the Constitutional Convention of Virginia of 1902 ..... 18, 19, 20, 22

Page

Report of the Senate Judiciary Committee (Senate Report No. 1662, 77th Congress, 2d Sess., Vol. 88, pp. 9029-9031) 14

Memorandum of United States District Court (Appendix K) 44

Order of Judge of United States District Court Dismissing Plaintiff's uit ((Appendix L) 7

Order of United States Court of Appeals Reversing Judgment of District Court, and remanding action with direction for three-judge court (Appendix M) 7, 9, 10, 14, 23

Opinion of Three-Judge District (Appendix A) .. 9, 28, 29

Order of Three-Judge District Court Dismissing Complaint (Appendix N) 54

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

Civil Action No. 473

JESSIE BUTLER,

Plaintiff,

v.

MARY A. THOMPSON, ET ALS.,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, appellant submits herewith her statement, particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause.

Opinion Below

The opinion of the Three-Judge District Court for the Eastern District of Virginia, Alexandria Division, is not yet reported in the Federal Reports. However, a copy of the opinion, findings of fact, conclusions of law and judgment are attached hereto as Appendix A.

Jurisdiction

The judgment of the District Court was entered on March 12, 1951. A petition for appeal is presented to the District

Court herewith, to-wit, on March 12, 1951. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253, 2281, 2284, and 2101(a) and 2101(b).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal to this Court:

United States v. *Capital Transit Company*, 325 U. S. 357;

United States v. *Detroit and Cleveland Navigation Company*, 326 U. S. 236;

United States v. *Pierce Auto Freight Lines*, 327 U. S. 515;

Matton Steamboat Co. v. *Murphy*, 319 U. S. 412.

Sterling v. *Constantin*, 287 U. S. 377.

Questions Presented

1

Whether or not the franchise laws of the 1902 Constitution of Virginia, and Acts of Assembly enacted pursuant thereto, violate the Fourteenth and Fifteenth Amendments of the Federal Constitution, and an Act of Congress passed January, 1870, admitting Virginia to representation in Congress.

2

Did the State of Virginia, by enacting Sections 18 to 23, inclusive, of the Virginia Constitution of 1902, and Section 22 of the Tax Code of Virginia, violate the Act of Congress passed January 26, 1870, under which the state was readmitted to representation in the Congress of the United States, conditioned on its good faith in carrying out the conditions set forth therein?

3

Will this Court uphold as constitutional a poll tax law requiring three years cumulative payment of the tax six months before an election as a prerequisite to the right to vote for Members of Congress and other Federal officers where the express purpose of such legislation is to disfranchise citizens because of race, color and previous condition of servitude?

4

Can a poll tax law which appears on its face to apply to all classes alike, but the true purpose of which (as is shown by the evidence in the record) is to deny the right guaranteed by the Fourteenth and Fifteenth Amendments of the Federal Constitution to Negro citizens, and the object of which poll tax law is to circumvent and violate the supreme law of the land, be upheld by the courts under the guise of a revenue statute?

5

Will the Acts concerning registration, of the present 1902 Constitution of Virginia, Sections 18, 19, 20, 21, 22, and 23, and the Acts of the General Assembly of Virginia enacted pursuant thereto be upheld by this Court when it appears on their face that these laws do not apply to all persons and classes alike, but that they are unfair, and that their purpose is to deny registration to citizens because of race, color and previous condition of servitude?

Statutes Involved

Title 28, United States Code, Section 1253. (June 25, 1948, c. 646, 62 Stat. 926).

Title 28, United States Code, Section 2281. (June 25, 1948, c. 646, 62 Stat. 968).

Title 28, United States Code, Section 2101. (June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, Sec. 106, 63 St. 104).

Fourteenth Amendment to Constitution of United States (Vol. II, O. S. 1931, p. 1613).

Fifteenth Amendment to Constitution of United States (Vol. II, O. S. 1931, p. 1614).

Constitution of Virginia of 1867, Article III, Sections 1 and 2 (Code of Virginia, 1873, pp. 8 & 9).

Constitution of Virginia of 1867, Article XII (Code of Virginia, 1873, p. 32).

Act of Congress Admitting Virginia to Representation in Congress (U. S. Statutes at Large 16, p. 62, 41st Congress, 1869-71).

Code of Virginia of 1873, Chapter VII (p. 146, 147).

Constitution of Virginia of 1902, Article II, Sections 18, 19, 20, 21, 22, 23, (Vol. 9, Michie's Code of Virginia, 1950, p. 448-452).

Tax Code of Virginia, Chapter V, Section 22 (Tax Code, Vol. 8, Michie's Code of Virginia, 1950, p. 349-350; Constitution of Virginia, Sec. 173, Vol. 9, Michie's Code of Virginia, 1950, p. 542).

Article VI, United States Constitution (Vol. II, O. S. 1931, p. 1608).

Seventh Amendment, United States Constitution (Vol. II, O. S. 1931, p. 1611).

United States Code, Title 8, Chapter 2, Section 31 (R. S., Sec. 2004).

United States Code, Title 8, Chapter 3, Section 43 (R. S., Sec. 1979).

Statement

The appellant, Jessie Butler, a colored woman, who was a resident and citizen of Arlington County, and of the State

of Virginia, at the time this cause arose, and is now a resident and citizen of the said County and State, did, on the 15th day of December, 1949, present herself at the office of Mary A. Thompson, the duly qualified central registrar for the County of Arlington, and asked that she be registered so that she could cast a ballot in the precinct in which she lives in Arlington County, Virginia, in the general election of November, 1950, and in future elections for Members of Congress and other State and Federal officials. The appellant presented proof of her qualifications to register and vote, in accordance with the Constitution of Virginia of 1867, and the Acts of the General Assembly of 1869-1870, and the Act of Congress of 1870.

The said defendant, Mary A. Thompson, refused to register the appellant because she had not paid a poll tax, and the appellant then brought this suit in the United States District Court for the Eastern District of Virginia, asking the said Court to direct the defendant, Mary A. Thompson, to register her in accordance with the Constitution of Virginia of 1867, and statutes made pursuant thereto, and the laws of the United States.

The appellant in her complaint also asks the said Court to compel the election officials, the other defendants in this cause, to permit the appellant to vote in the 1950 general election for Members of Congress and other Federal and State officers, and in future elections, and for a declaratory judgment voiding the franchise laws of the 1902 Constitutional Convention as repugnant to the Fourteenth and Fifteenth Amendments.

The appellant also asks that the Court award her damages in the amount of $5,000.00, against the defendant Mary A. Thompson, because of the illegal and wilful denial on the part of the said defendant to register the appellant so that she could vote.

The appellant, in her complaint, further charged that the election laws and franchise laws of the Constitution of Virginia of 1902 are in violation of the Constitution of Virginia of 1867, and the Act of Congress of 1870 admitting Virginia to representation in Congress, and were passed for the avowed purpose of prohibiting Negroes from voting. The appellant also charged that the franchise laws of Virginia violate the Fourteenth and Fifteenth Amendments of the Federal Constitution because their purpose was to discriminate against Negroes on account of race and color and previous condition of servitude, and submitted uncontroverted evidence at the trial to support the allegation.

The appellant further alleged in her complaint, and set up in the said complaint, statistics to show that the present franchise laws of Virginia do, in fact, operate to prohibit Negroes from voting; and the appellant further charged that the present franchise laws of Virginia constitute a conspiracy on the part of election officials and others who administer them to prohibit her and other Negroes from voting, in violation of her constitutional rights. At the trial she produced uncontrovertible evidence which clearly showed that the purpose of the present Virginia franchise laws to prohibit Negroes from voting, in violation of the Fourteenth and Fifteen Amendments, and that the administration of these laws actually accomplished this purpose.

The Questions Are Substantial

The issues involved in this appeal are the same as those in the case of *Ex parte Commonwealth of Virginia*, 100 U.S. 676; *Yick Wo* v. *Hopkins*, 118 U.S. 227; *Guinn* v. *United States*, 238 U.S. 347; *Myers* v. *Anderson*, 238 U.S. 368; *Lane* v. *Wilson*, 307 U.S. 268; *United States* v. *Classic*, 313 U.S. 1031; *Smith* v. *Allwright*, 321 U.S. 1031; *Rice* v. *Elmore*, 4th Cir. 165 F. 2d 387, 392; *Davis* v. *Schnell*, 81 F. Supp. 872, 880.

The appellant, Jessie Butler, filed her bill of complaint against the defendants on January 6, 1950, in the District Court in Alexandria. She requested a three-judge court, in accordance with Sections 2281 and 2284, U.S. Code, Title 28 on the ground that her complaint presented substantial constitutional questions.

The trial judge of the United States District Court for the Eastern Division of Virginia dismissed the complaint on the ground that such questions as were set forth in the bill of complaint did not present substantial constitutional questions, and therefore a three-judge court, in accordance with Sections 2281 and 2284, was not justified (Appendix L).

Whereupon, the appellant prosecuted an appeal to the United States Circuit Court of Appeals, Fourth Circuit. The record and briefs were printed and filed with said appellate court, and the matter was argued on October 13, 1950. The case was decided October 16, 1950. A copy of the opinion is herewith attached (Appendix M).

The United States Circuit Court of Appeals said: "There was error in refusing to take appropriate action for convening a statutory court of three judges to hear the case, as substantial constitutional questions were unquestionably involved. We do not here attempt to pass upon these questions, as they are matters for the judgment of the three-judge District Court, with review thereof, if any, by the Supreme Court of the United States. The judgment dismissing the action will be reversed, and the case will be remanded to the District Court, with direction that a court of three judges be constituted, as required by statute, to pass upon the questions involved." (Appendix M).

Pursuant to said mandate and opinion, said three-judge district court was constituted, and it is from the judgment of said district court that this appeal is prosecuted. A copy

of said judgment and opinion is attached. (See Appendix M).

The appellant contends that the evidence in the transcript of the record will show conclusively that the purpose of the Virginia franchise laws was to prevent Negroes from voting, in violation of the Act of Congress (see the Fourteenth and Fifteenth Amendments of the Constitution of the United States), and comes clearly within the principle of law laid down in *Lane* v. *Wilson*, 307 U.S. 268, wherein the Court said

> "We therefore cannot avoid passing on the merits of the plaintiff's constitutional claims. The reach of the Fifteenth Amendment against contrivances by a State to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions. The amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race."

This principle is followed in *Davis* v. *Schnell*, 81 F. Supp. 872, 880, by a three-judge court holding unconstitutional the Boswell amendment to the constitution of Alabama prescribing an educational qualification for suffrage designed to disfranchise Negro voters. Said the Court:

> "It, thus, clearly appears that this Amendment was intended to be, and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color. Therefore, we are necessarily brought to the conclusion that this Amendment to the Constitution of Alabama, both in its object and the manner of its administration, is unconstitutional, because it violates the Fifteenth Amendment. While it is true that there is no mention of race or color in the

> Boswell Amendment, this does not save it. The Fifteenth Amendment 'nullifies sophisticated as well as simple-minded modes of discrimination' and 'It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.' "

The same principle is followed in *Rice* v. *Elmore*, 4 Circuit 165 F. 2d 387, 392. Said the Court:

> "These amendments have had the effect of creating a federal basis of citizenship and of protecting the rights of individuals and minorities from many abuses of governmental power which were not contemplated at the time. Their primary purpose must not be lost sight of, however; and no election machinery can be upheld if its purpose or effect is to deny to the Negro on account of his race or color any effective voice in the government of his country or the state of community wherein he lives."

The appellant further states that the franchise laws are not fair upon their face, and come clearly within the principle of *Guinn* v. *United States*, 238 U.S. 347; and *Meyers* v. *Anderson*, 338 U.S. 368.

And the appellant also states that the evidence by the transcript of the record will clearly show that the franchise laws are administered with an evil eye and unequal hand, and come within the principle of *Yick Wo* v. *Hopkins*, 118 U.S. 336; *Lane* v. *Wilson*, 307 U.S. 268; *Rice* v. *Elmore*, 4th Cir. 165 F. 2d 387, 392; *Davis* v. *Schnell*, 81 F. Supp. 872, 880.

Moreover, the opinion (Appendix A) of the instant three-judge District Court from which this appeal is prosecuted, is in conflict with principles of law stated in the case of *Michael* v. *Cockerell*, 161 F. 2d 163, and *Butler* v. *Thompson*, 4th Cir —— (See Opinion, Appendix M).

Again, too, the opinion of the three-judge District Court is in conflict with the opinion of *Guinn* v. *United States*, 238 U.S. 374; *Meyers* v. *Anderson*, 238 U.S. 368; *Lane* v. *Wilson*, 307 U.S. 268; *Rice* v. *Elmore*, 4 Cir. 165 F. 2d 387; *Davis* v. *Schnell* (a three-judge court from Alabama), 81 F. Supp. 872, 880.

Further, the District Court erred in not following the evidence in accordance with the opinion of *Michael* v. *Cockerell*, 4 Cir. 161 F. 2d 163; *Butler* v. *Thompson*, 4 Cir. (Appendix M).

Argument under Assignments of Error

Argument under Assignment of Error No. 1

1. In connection with Assignment of Error No. 1, in which the plaintiff asserts that the District Court erred in not holding that the Act of Congress of 1870 was binding upon Virginia in preventing said State from imposing a poll tax of $1.50 a year for three consecutive years, payable six months in advance of the general election, as a prerequisite to voting, the plaintiff contends that the said Act of Congress was passed and imposed under authority of the Fifteenth Amendment to the Federal Constitution, Section 2, "The Congress shall have power to enforce this article by appropriate legislation."

Section 1 of the Fifteenth Amendment says,

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude."

This Act of Congress was passed to prohibit Virginia from amending the Constitution of 1867, which was ratified by the people of Virginia and approved by Congress, in which the right of franchise did not impose a poll tax

as a prerequisite of voting (See Constitution of Virginia, Article 3, Sections 1 and 2).

The authority for passing this Act of Congress under the Fifteenth Amendment is in line with *Ex parte Commonwealth of Virginia,* 100 U. S. 676, in which the Court said:

> "The prohibitions of the Fourteenth Amendment are directed to the States and they are to a degree a restriction of State power. It is this which Congress is empowered to enforce, and to enforce against State action, however put forth, whether such action be executive, legislative or judicial. Such enforcement is no invasion of state sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact."

2. Section 4, of Article I, of the Federal Constitution, reads as follows:

> "The Times, Places and Manner of holding Elections for Senator and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such Regulations, except as to the places of choosing Senators."

In the *Yarbrough* case, reported in 110 U.S. 651, the Supreme Court said:

> "The right to vote for members of Congress is fundamentally based upon the Constitution of the United States, and was not intended to be left within the exclusive control of the State."

Supreme Court Justice Miller in that case said:

> "But it is not correct to say that the right to vote for a Member of Congress does not depend upon the Constitution of the United States."

Section 31, United States Code, Title 8, Chapter 2, provides:

> "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or territory, or by or under its authority, to the contrary notwithstanding." (R.S. Section 2004).

In that connection, in the case of *United States* v. *Classic*, 313 U.S. 1031, Mr. Justice Stone said:

> "The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution.
>
> "While in a loose sense, the right to vote for a Representative in Congress is sometimes spoken of as a right derived from the State * * * this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject, as provided by Section 2 of Article I, to the extent that Congress has not restricted State action by the Section 4, and its more general power under Article I, exercise of its power to regulate elections under Section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers' ".

Therefore, it seems obvious that under the Fifteenth Amendment, supra, Congress did have constitutional authority to pass the act admitting Virginia to representation in Congress, based upon the proposition

> "That the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class

> of citizens of the United States of the right to vote who are entitled to vote by the Constitution herein recognized * * * Provided, that any alteration of said Constitution, prospective in its effects, may be made in regard to the time and place of residence of voters."

If, under the Yarbrough case (supra), and the Classic case (supra), Congress, by general law can exercise its legislative function to prescribe the qualifications of voters and regulate elections for Members of Congress, why then, under *Ex parte Commonwealth of Virginia* (supra) could not Congress enforce the Fifteenth Amendment, as it did by the Act of Congress passed January, 1870 (supra), as applied to Virginia?

Article VI of the Constitution says,

> "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding * * *."

In effect, by the opinion of the District Court and the judgment rendered by said court, that court has declared the Act of Congress of January, 1870, relating to Virginia unconstitutional.

Argument under Assignment of Error No. 2

Under Assignment of Error No. 2, the appellant asserts that the franchise laws of Virginia, as adopted by the 1902 Constitutional Convention, were passed for the avowed purpose of preventing Negroes from voting, and that the said laws plainly violate the Fourteenth and Fifteenth Amendments of the Federal Constitution. To prove that

was the purpose of the Virginia Constitutional Convention of 1902 which enacted these franchise laws, plaintiff offered as evidence the official Debates of the Virginia Constitutional Convention of 1901 and 1902. These Debates were received as evidence by the District Court and they formed an important part of the Report of the Senate Judiciary Committee of the 77th Congress, relating to the poll tax; Senate Report No. 1662, 77th Cong., 2d Sess. Cong. Rec. 77th Cong. 2d Sess., Vol. 88, pp. 9029-9031; and that report was referred to in the opinion of *Jessie Butler* v. *Mary A. Thompson et al.*, argued October 13, 1950, and decided October 16, 1950, in which the United States Circuit Court of Appeals reversed the Fourth Circuit District Court and a three-judge court was constituted (See Appendix M). This report of the Senate Judiciary Committee, set forth in part, is as follows:

> "We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that these State constitutions from which emanated mainly the poll tax laws were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way, but in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter, and hence they devised the poll tax method, which applied to white and colored alike. In other words, the poll tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.
>
> "We desire to call attention to the Virginia constitutional convention which submitted an amendment, which was afterward adopted, to the Constitution of Virginia, by which it was intended to disfranchise a very large number of Virginia citizens. We think this

convention can be regarded as a fair example of other conventions in other poll tax States. Hon. Carter Glass was a member of that convention. Near the beginning of the convention Senator Glass made a speech in which he outlined in very forceful language what the object was, after all, of the convention. He did this in his usual commendatory method of getting at the real cream in the cocoanut. Near the beginning of the convention he made a speech in which he said:

> 'The chief purpose of this convention is to amend the suffrage clause of the existing constitution. It does not require much prescience to foretell that the alterations which we shall make will not apply to "all persons and classes without distinction." We were sent here to make distinctions. We will make distinctions.'

"Near the conclusion of the convention, Senator Glass delivered another address, in which he referred to the work already performed by the convention. He said:

> 'I declared then (referring to the beginning of the convention and debate on the oath) that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant voters (great applause) whose capacity for self-government we have been challenging for 30 years past.'

"There is no doubt but what Senator Glass stated the real object the convention had in view. The fact that his remarks were received with great applause indicates that his fellow members of that convention agreed with him and that the real object they had in view, and which they believed they could accomplish, was disfranchising '146,000 ignorant Negro voters.'

"Under the circumstances, can there be any doubt when perhaps the greatest leader of all stated what the object was and what was expected to be accom-

plished by the so-called poll tax laws? If we concede that this was the object of the law, then we admit it is unconstitutional because, if this was the effect of the law, it in fact made an artificial qualification which, in itself, is illegal and unconstitutional, in order to come in under the qualification clause of section 2, article I, of the Constitution.

"It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the Act of Congress of June 26, 1870 (16 Stat. p. 62). The provision which refers to Virginia reads as follows:

> 'The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws equally applicable to all the inhabitants of said State: PROVIDED, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters.'

"It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and absolutely unconstitutional.

"It seems perfectly plain that the object of this poll tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting, and that, therefore, under Section 2, of Article I, of the Constitution, it seems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called 'qualifications' clause in Section

2, of Article I, of the Constitution. It is likewise equally plain that at the end of the War between the States, when these States were readmitted under a statute of Congress which provided explicitly that the constitutions of the States 'shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote.'

"In Section 4, Article IV of the Constitution of the United States it is provided:

> 'The United States shall guarantee to every State in this Union a republican form of government.'

"What does this mean in the light of the present day civilization? Can we have a republican form of government in any State if, within that State, a large portion and perhaps a majority of the citizens residing therein are denied the right to participate in governmental affairs because they are poor? We submit that this would be the result if under Section 2, Article I, of the Constitution, the proposed law is held to be unconstitutional. The most sacred right in our republican form of government is the right to vote. It is fundamental that that right should not be denied unless there are valid constitutional reasons therefor. It must be exercised by free men. If it is not, then we do not have a republican form of government. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

"Section 1, of the Fourteenth Amendment to the Constitution of the United States reads as follows:

> 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, with-

> out due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'
>
> "It is quite clear that the so-called poll tax laws do abridge the privileges and immunities of the citizens of the United States. If citizens of the United States are required to pay a poll tax it is clearly an abridgment of their privileges and immunities.
>
> "It is said that Section 2 provides an exclusive remedy for a violation of Section 1 of the Fourteenth Amendment to the Constitution. Section 2 refers to the apportionment among the several States of representatives in Congress and provides for the reduction in the number of such representatives whenever the right to vote is denied. We do not think this remedy is an exclusive one. Section 1, of the Fourteenth Amendment to the Constitution is positive in its terms and says that no State shall make or enforce any law which is an abridgment of the privileges and immunities of citizens of the United States." (Senate Judiciary Report, supra.)

Again, in connection with the purpose of the above Constitutional Convention of Virginia to rid the State of Negro voters, the Court's attention is directed to the following remarks of Delegate Carter Glass (Debates, p. 292):

> "Now, then, to the facts of the case: In response to the demand of the white people of Virginia, a Democratic Legislature proposed to the people the calling of a Constitutional Convention to revise and amend the present constitution. The primary purpose of that convention was to abridge the right of popular suffrage and to eliminate every negro of whom we could be rid without running counter to the prohibition of the Federal Constitution. Not a white man in Virginia, nor a black man of ordinary intelligence, will contend that this purpose of constitutional revision was disguised or attempted to be concealed."

And Delegate Barbour, from Culpeper, said the following (Debates, p. 181):

> "Mr. Chairman, we all know that the great purpose of calling this convention was to restrict the suffrage and to restrict it in a certain direction. Shall we, after having spent several months here in earnest discussion of this instrument, go back and submit the constitution which we shall adopt to the very electorate which the people have already declared incapable of properly exercising the powers of government? Is there any reason why we should do it? Would there be any justification for such a course?
>
> "I not only think it would not be wise, but I think it would be the height of folly and it would be a stultification of the work of the people to come here and prepare a constitution and then say it must be first approved by a class of citizens whom we all declare are incapable and who have already, by the sovereign voice of the people of Virginia, been declared incapable of exercising and incompetent to exercise the rights of citizenship."

Nothing could be clearer to show the unlawful purpose of the Virginia Constitutional Convention than the following statement by Delegate Thom (Debates, p. 2973):

> "We come here to sweep the field of expedients for the purpose of finding some constitutional method of ridding ourselves of it forever; and we have the approval of the Supreme Court of the United States in making that effort. When, in the Williams case, going up from Mississippi, the point was made against the constitutionality of the Mississippi suffrage law, that the Supreme Court of that State had said, as to the purpose of the framers of the suffrage plan, that 'within the field of permissible action, under the limitations imposed by the Federal Constitution, the Convention swept the field of expedients to obstruct

the exercise of suffrage by the Negro race, what did the United States Supreme Court reply? It was this:

> 'If weakness were to be taken advantage of, it was to be done within the field of permissible action under the limitations imposed by the Federal Constitution.'

"So, in that high tribunal, it was said that, within the limits of the Federal Constitution it is permissible for this people to search for expedients to exclude the negro race. If then, a rigid examination permitted by the Constitution excluded the negro; then, in law, he is excluded by virtue of his failure to attain a certain standard, and not for the reason he is a negro; and therefore, the law itself is constitutional. But again, I expect this clause to be efficient, because it will act 'in terrorem' upon the negro race. They believe that they will have a hostile examination put upon them by the white man, and they believe that that will be a preventive to their exercising the right of suffrage, and they will not apply for registration. They will know that they first have to pass an examination; that they will then have to make out their application for registration in their own handwriting; that then they have to make out their ballot without assistance, and that then they have to pay a capitation tax. These impediments will be too great for the negro, and he will find himself, as a practical question, excluded from the suffrage."

However, the Virginia Convention was not satisfied with stumbling blocks, and set up the poll tax itself to keep the Negroes from voting, and it also resorted to the registration clause.

Here is what one delegate said concerning how it would work as a practical way to prohibit Negroes from voting (Debates, p. 2972 and p. 2974):

> "But it would not be frank in me, Mr. Chairman, if I did not say that I do not expect an understanding clause to be administered with any degree of friendship by the white man to the suffrage of the black man. I expect

the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. I would not expect an impartial administration of the clause.

"This is what is the meaning in the minority plan of this understanding clause—it means that the whole white voting population of the State of Virginia is to walk into this suffrage; either through the educational test or through the understanding clause; and my friends expect to go back to their constituents and to justify their action towards the white illiterate voters of their counties and cities by the fact that they have provided this gateway to the suffrage for them through the understanding clause. They have demanded that the understanding clause of this Convention and of this committee, for the purpose of protecting their white men. We concede it to them. We say we are hand in hand with you in the purpose of bringing your white men to the polls, but at the same time, we say forget not, gentlemen, the problem that is upon us, and concede the same thing to us for the purpose of excluding our black man from the polls.

"The administration of the new law will thus be, during all that time, exactly what you want it to be. What does it amount to to leave the understanding clause in the Constitution after that time?

"The first is to throw some additional obstacle in the way of the negro who shall attempt to vote. But the second and most important is that, in the event this understanding clause were to be administered by a party hostile to white domination and partial to negro suffrage, there would still remain between the negro and the ballot box every impediment which is offered at first by the minority plan—to-wit, the requirement that the voter shall make out his application for registration in his own handwriting, and shall make out and deposit his ballot without assistance.

The unlawful purpose of the Convention was so patently plain that Delegate Judge Thomas W. Harrison was forced

to warn the Convention. His warning, however, fell upon deaf ears. But here is what he had to say upon the subject (Debates, p. 158):

> "Mr. Chairman, I think it is absolutely demonstrable that, as a matter of law, this body is compelled to submit its work to the people at present constituting the electorate. If you do not do it you are going to invite litigation which will in all probability overturn in some Federal court the work that we do here. Of course, I do not think the State courts will have any possible jurisdiction in the matter, but I believe that the Federal courts will have jurisdiction and will have power under the authority and under the law that I have undertaken to cite here, to overturn the work of this Convention."

The Debates of the 1902 Constitutional Convention of Virginia, from which the above quotations were taken, form some of the plaintiff's evidence, and were received by the district court in accordance with stipulation of counsel for plaintiff and defendants. (Transcript of the evidence.)

Counsel for appellant submit that the purpose for the Constitutional Convention, as shown by the debates and evidence, was to violate the Federal Constitution and the Act of Congress, and that said purpose comes within the rule laid down in *Guinn* v. *United States,* 238 U. S. 347; *Lane* v. *Wilson,* 307 U. S. 268; *Myers* v. *Anderson,* 238 U. S. 368; *Rice* v. *Elmore,* 165 F. 2d 387; and *Davis* v. *Schnell,* 81 F. Supp. 872, 880.

Judge Cooley said, in that connection:

> "All regulations of the elective franchise, however, must be reasonable, uniform and impartial. They must not have for their purpose directly or indirectly to deny or abridge that constitutional right of the citizen to vote, or unnecessarily to impede its exercise. If they do they must be declared void." (Cooley, Const. Lim. (5th Ed.) 758.)

Argument under Assignment of Error No. 3

In connection with Assignment of Error No. 3, failure and refusal of the Court to find and hold that the franchise laws of Virginia as adopted by the 1902 Constitutional Convention and the Acts of Assembly made pursuant thereto, are not fair upon their face and do not apply to all classes alike, and therefore violate the Fourteenth and Fifteenth Amendments of the Federal Constitution, under Article II, of the 1902 Constitution (See Appendix I), appellant asserts that these sections show on their face class distinction in that a person who was registered prior to 1902 shall have the right to vote without any further registration, and that the wife or widow of a Confederate soldier did not have to pay any poll tax, and that any Confederate soldier did not have to pay a poll tax. Also, the construction of the so-called grandfather clause was discussed and interpreted in *Guinn* v. *United States*, 238 U. S. 347, and *Myers* v. *Anderson*, 238 U. S. 368; and in *Lane* v. *Wilson*, 307 U. S. 268, and is pertinent to the appellant's case. *Lane* v. *Wilson*, the appellant believes, is on all fours with the Virginia registration requirements of the 1902 Constitution of Virginia.

Argument under Assignment of Error No. 4

In connection with Assignment of Error No. 4, in which the plaintiff alleges that the Virginia franchise laws are discriminatory and are administered with an evil eye and unequal hand, to prevent Negroes from voting, and thereby violate the Fourteenth and Fifteenth Amendments to the Federal Constitution, the Court's attention is specifically called to the opinion of *Butler* v. *Thompson*, decided by the United States Circuit Court of Appeals, 4th Circuit, October 16, 1950 (Appendix M), in which the Court said:

> "The complaint in this case repeats allegations contained in the complaint in *Michael* v. *Cockerell* (161 F.

2d 163) which was before us three years ago. Although the appeal in that case was dismissed as moot, we pointed out that the complaint raised questions of the gravest character, which, if the case were properly before us, would merit our most careful consideration. We said

> 'The complaint and offers of proof raise questions of the gravest character, which, if presented in a case properly before us, would merit our most careful consideration. It is alleged that the provisions of the Constitution of Virginia with respect to the payment of poll tax as a prerequisite of voting were deliberately adopted for the purpose of disfranchising Negro citizens, that the debates and records of the constitutional convention so show, and that the provisions are at present administered for that purpose and with that effect. It is further alleged that thousands of citizens, white as well as colored, are denied the right to vote because of the way in which these provisions are administered, and that the right to vote is limited to such an extent that the republican form of government guaranteed by the Constitution of the United States is denied and the privileges and immunities of citizens of the United States are substantially abridged. There is allegation that as many as fifty thousand persons otherwise qualified are kept from voting in the congressional district in question as the result of the poll tax requirement, and that in the state at large it has resulted in less than 22% of those otherwise qualified participating in elections. We are not impressed by the argument that such grave violations of the constitutional rights of citizens as those here alleged present merely political questions with which the courts are powerless to deal. In a case properly before us, it would be our duty to inquire whether upon the allegations and proofs rights of citizens guaranteed by the Constitution were being denied them, and if so, to grant appropriate relief.' ''

The complaint which brought about the above comment by the Circuit Court of Appeals, 4th Circuit, in *Butler* v. *Thompson, supra,* alleged that notwithstanding the Virginia Tax Code, Section 5, Chapter 25, only a small part of the 364,114 negroes 21 years of age or over in the State, according to the 1940 Census, were assessed in accordance with the aforesaid statute; and that of the 1,552,570 persons 21 years of age and over in Virginia, only 1,161,097 were assessed for a poll tax, leaving 391,473 persons not assessed for said poll tax; and that these persons not assessed consist mostly of negroes (See Designation of Record, Tables Stipulated).

The plaintiff-appellant also set out in said complaint a table showing the number of negroes 21 years of age and over, the total white and colored population and the number actually assessed, according to the 1940 United States Census, in the counties and cities comprising the Eighth Congressional District of Virginia, as follows:

County	Negroes 21 Yrs. of Age and over	Total Population	Number Actually Assessed
Albemarle	3313	13,780	10,994
Arlington	2139	39,693	31,427
Culpeper	3034	7,800	4,008
Fairfax	4427	25,891	18,168
Fauquier	3185	12,066	7,913
Fluvanna	1336	4,003	2,827
Goochland	2270	4,804	4,723
Greene	439	2,737	2,930
King George	507	3,161	2,273
Loudoun	2188	11,920	10,718
Louisa	2772	7,610	6,108
Madison	1145	4,831	3,569
Orange	1830	7,301	3,418
Prince William	1445	10,708	4,518
Stafford	730	5,565	4,980
Alexandria (City)	3446	22,512	18,543
Charlottesville (City)	2649	13,001	11,124
		197,393	148,241

Appellant claimed that this table reflected that of the 197,393 residents of the Eighth Congressional District 21 years of age and over, only 148,241 were actually assessed,

leaving 49,151 persons, white and colored, 21 years of age and over, not assessed; and the appellant also charged that 35,000 of these were negro citizens, who were disfranchised in violation of the Constitution of the United States and the laws of Virginia.

The plaintiff-appellant also charged that as a result of the aforesaid discriminatory franchise laws in the State of Virginia, which had for their purpose the deprivation of the Negro of his right to vote for Members of Congress because of his race, color and previous condition of servitude, this purpose was accomplished, as shown by the material drop in the number of voters in the State of Virginia, as shown in the following table of percentages which was set up in the said complaint:

Chart Showing Percentage of Voters in Presidential Elections, Based on Male Population prior to 1920, and on Adult Population beginning with 1920.

Year	State of Virginia Per Cent
1872	57.74
1876	67.32
1880	56.42
1884	72.61
1888	74.75
1892	68.96
1896	66.45
1900	57.00
1904	28.05
1908	27.10
1912	25.81
1916	27.87
1920	16.67
1924	21.21
1932	20.08
1936	21.65
1940	21.58

Appellant asserts that the uncontroverted evidence submitted to the three-judge district court proved her allegations, which the United States Circuit Court of Appeals for the 4th Circuit, in *Butler* v. *Thompson, supra,* called grave violations of constitutional rights.

To these allegations of the plaintiff-appellant, the Attorney General, representing the Commonwealth of Vir-

ginia and defendants, filed an answer, and set up a table which he claimed to be accurate. The table, which is part of his answer, is set forth below:

	Total Over 21	Total Assessed	Negroes Over 21	Negroes Assessed	Whites Over 21	Whites Assessed
Albemarle	13,728	10,959	3,034	2,144	10,694	8,815
Arlington	39,693	31,125	3,313	1,863	36,380	29,262
Culpeper	7,800	4,007	2,139	664	5,661	3,343
Fairfax	25,891	18,114	4,427	1,835	21,464	16,279
Fauquier	12,066	7,913	3,185	1,496	8,881	6,417
Fluvanna	4,003	2,822	1,336	813	2,667	2,009
Goochland	4,804	4,722	2,270	2,244	2,534	2,478
Greene	2,737	2,930	439	492	2,298	2,438
King George	3,161	2,273	907	679	2,254	1,594
Loudoun	11,929	10,698	2,188	1,722	9,741	8,976
Louisa	7,610	6,108	2,772	1,974	4,838	1,134
Madison	4,831	3,569	1,145	727	3,686	2,842
Orange	7,301	3,418	1,830	506	5,471	2,912
Prince William	10,708	4,516	1,445	535	9,263	3,981
Stafford	5,565	4,980	730	633	4,835	4,347
Alexandria	22,512	18,542	3,446	1,987	19,066	16,555
Charlottesville	13,001	10,930	2,648	2,506	10,353	8,424
	197,340	147,626	37,254	22,820	160,086	124,806

The plaintiff-appellant accepted the above table of the Attorney General as being accurate, rather than her own; and this table, filed on behalf of the Commonwealth of Virginia, shows that there were 197,340 persons, white and colored, 21 years of age and over, in the Eighth Congressional District, and of this number 146,625 were assessed with a poll tax, leaving 49,714 persons, white and colored, 21 years of age and over, not assessed, or a total of over 25% of the total population unassessed as required by Section 5, Chapter 25, of the Tax Code of Virginia.

The table showed a total of 37,254 negroes 21 years of age and over who should have been assessed. Of this number only 22,820 were assessed, leaving 14,974 unassessed, or over 40 per cent who were not assessed for a poll tax.

Now, in connection with the assessment of the whites, it shows a total of 160,086 whites 21 years of age and over who should have been assessed, and 124,806 whites who were assessed, or 35,280 whites 21 years of age and over not as-

sessed, or a percentage of 22% unassessed whites, as against 40% negroes not assessed.

The plaintiff-appellant submits that these figures and totals, which were accepted as conclusive evidence, support completely the allegations of the plaintiff-appellant which the United States Circuit Court of Appeals, Fourth Circuit, *Butler* v. *Thompson, supra,* said were grave constitutional violations of the rights of the citizens of Virginia.

Judge Dobie, writing the opinion for the three-judge District Court, said that the plaintiff failed utterly to show any discrimination against negroes in the administration of Virginia poll tax laws, and dismissed, apparently as unimportant, the discriminations and lack of assessments which the United States Circuit Court of Appeals, in *Butler* v. *Thompson, supra,* said were grave violations of constitutional rights (Appendix A, pp. 39 and 40).

Judge Dobie, in said opinion, also laid great stress on the testimony of Deputy Sheriff Trice, in which, Judge Dobie said, the witness had testified that he did not know of any discrimination in administering the poll tax laws, and he knew of no instance in which said discrimination was used.

In drawing this conclusion, Judge Dobie completely disregards the later testimony of Deputy Sheriff Trice, on re-direct examination, that he knew nothing about the operation of the Treasurer's Office of Arlington County, or of the office of the Commissioner of the Revenue. This testimony completly destroyed the value of his original statement that he knew of no discrimination, upon which Judge Dobie laid such stress.

In connection with the testimony of Deputy Sheriff Trice and Sheriff Clements, these two witnesses were put upon the stand to testify on direct examination that during their tenure of office, at no time had the State Department of Taxation ever sent a levy, or tax suit, or any other

legal paper in an attempt to collect said poll taxes. The Attorney General, representing the defendant Commonwealth of Virginia, asked Deputy Sheriff Trice if he knew of any discrimination. Counsel for the plaintiff-appellant objected to this question on the ground that it was outside the scope of testimony on direct examination. The Court held that had there been a jury the objection would have been sustained, but as the matter was being tried without a jury, the Court allowed the question of the Attorney General and the answer of the witness. (See Appendix A, p. 33; also, Transcript of Evidence)

Relating to the testimony of Deputy Treasurer Shepherd, this witness was introduced by the plaintiff-appellant to show the number of capitation taxes actually assessed in Arlington County, the number paid and the amount of money paid; and the evidence showed that many, many thousands of dollars of poll tax assessments were not paid, and that no attempt had been made by the taxing authorities to collect these poll taxes. The purpose of this testimony was to show that the poll tax was not a revenue tax, as is claimed, but a restrictive tax, in keeping with the purpose of the Constitutional Convention of 1901 and 1902, to throw all possible impediments in the way, to rid the State of Negro voters, in violation of their constitutional rights. (Transcript of Evidence).

It is submitted that the decision of the District Court is contrary to the law as laid down by this Court, and is contrary to the evidence adduced in the trial, and is contrary to the decision of the United States Circuit Court of Appeals in the case of *Butler* v. *Thompson*, which remanded this case to be heard by the instant three-judge District Court.

We believe that the questions presented by this appeal are substantial constitutional questions, as so stated by the

United States Circuit Court of Appeals, in *Butler* v. *Thompson, supra,* and by the report of the United States Judiciary Committee, supra, and that they are questions of great public interest to 1,552,000 citizens 21 years of age and over in the Commonwealth of Virginia.

Respectfully submitted,

JOHN LOCKE GREEN,
FRANK L. BALL,
Counsel for Plaintiff-Appellant.

APPENDIX A

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Filed March 19, 1951. Walkley E. Johnson, Clerk, Earl C. Fletcher, Deputy Clerk.

Civil Action No. 473

JESSIE BUTLER, Plaintiff,

v.

MARY A. THOMPSON, Central Registrar for the County of Arlington, Virginia, et als., Defendants.

Argued January 29, 1951, Decided ——

Before DOBIE, Circuit Judge, and HUTCHESON and BRYAN, District Judges.

John Locke Green, Esquire; Frank L. Ball, Esquire; Attorneys for Plaintiff.

John W. Jackson, Esquire; J. Lindsay Almond, Attorney General of Virginia; Walter E. Rogers, Assistant to the Attorney General of Virginia, Attorneys for Defendants.

DOBIE, Circuit Judge:

Jessie Butler, (hereinafter called Butler) instituted a civil action in the United States District Court for the Eastern District of Virginia against Mary A. Thompson (hereinafter called Thompson), Central Registrar of the County of Arlington, Virginia, and against various other election officials. Butler asked the court to direct Thompson to register her as a duly qualified voter so that Butler might be permitted to vote in an election then imminent and Butler further asked the court to compel the other defendants, who were election officials, to permit Butler to vote in future elections. Damages in the sum of $5,000.00 were asked for the refusal of Thompson to register Butler, on the ground that this refusal was wilful and illegal.

The District Judge decided that "the case made by the complaint did not authorize the convening of a three-judge court, because there was no substantial Constitutional or Federal question presented by the complaint" and that "the said complaint does not state a cause of action for the recovery of damages." The complaint was, accordingly, dismissed by the District Court. On appeal, the United States Court of Appeals for the Fourth Circuit reversed the District Court, and in a per curiam opinion (handed down October 16, 1950) stated:

> "There was error in refusing to take appropriate action for convening a statutory court of three judges to hear the case, as substantial constitutional questions were unquestionably involved. We do not here attempt to pass upon these questions, as they are matters for the judgment of the three judge District Court, with review thereof, if any, by the Supreme Court of the United States.
>
> "The judgment dismissing the action will be reversed, and the case will be remanded to the District Court, with direction that a court of three judges be constituted as required by statute to pass upon the questions involved."

The plaintiff here alleged in her complaint that she is a member of the Negro race; that she now is, and for many years has been, a resident of Arlington County, Virginia; that on December 15, 1949, she presented herself duly at the office of Mary Thompson, Central Registrar of the County of Arlington, Virginia, and demanded that she be registered so that she could vote in the general election of 1950 and future elections; and that Thompson refused to register plaintiff on the ground that plaintiff had not, as is required by Virginia law, paid her poll tax for the three preceeding years. The complaint alleged that, apart from the payment of her poll taxes, plaintiff was in every way qualified to register under the Virginia law as a voter.

The complaint further alleged that the requirement of the payment of a poll tax as a prerequisite to voting was one of the provisions inserted in the Virginia Constitution of 1902

for the express purpose of denying to Negro citizens the right of suffrage; that it is now being administered in such a way as to discriminate against Negroes; that the election officials of Virginia have conspired to administer the election laws of the State so as to disfranchise Negroes. Accordingly, it is alleged, the franchise provisions of the Virginia Constitution of 1902 and the Tax Code of Virginia violate the Virginia Constitution of 1867, the Act of Congress of 1870 admitting Virginia to representation in Congress, and the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

At the hearing before the three-judge court, plaintiff, in addition to filing numerous exhibits which were chiefly statistical and are later discussed, introduced three witnesses, all officials of the State of Virginia: Messrs. Shepherd (Deputy Treasurer of Arlington County), Clements (Sheriff of Arlington County), and Trice (Deputy Sheriff of Arlington County). Not one shred or scintilla of evidence was evoked from these three witnesses that even had a tendency to support the plaintiff's contentions. Indeed, the only testimony given by these witnesses of any consequence whatever was that of Trice, who, on cross-examination, testified that to the best of his knowledge, the practices and procedures in administering the poll tax laws as prerequisites to voting were precisely the same as to Negroes and white persons and that he knew of no instance of administering these laws so as to discriminate against Negroes. Plaintiff Butler did not testify.

Defendants introduced only one witness, the defendant Thompson, Central Registrar of Arlington County. Her appearance, her manner of testifying, her frankness and candor made an unusually favorable impression on this court. She testified that, as alleged, the plaintiff Butler did appear before her and that she refused to register plaintiff solely because the plaintiff had not paid her poll taxes as is required by Virginia law. She further testified that she offered to register plaintiff if plaintiff would pay the required poll taxes. Thompson's testimony also supported that of Deputy Sheriff Trice that the practices and procedures of her office were precisely the same as to both Neg-

roes and white persons and that, both as to plaintiff and others offering to register, there was no discrimination whatever against members of the Negro race.

Plaintiff here bases her case on three contentions: (1) the poll tax requirements for voting in Virginia are invalid because Virginia is prohibited by the Act of Congress of January 26, 1870, from imposing such requirements; (2) these requirements are invalid because of the evil motives of the draftsmen of the Virginia Constitution of 1902 and subsequent poll tax statutes of Virginia; and (3) the Virginia Constitution and subsequent poll tax statutes are invalid because, even if these be fair on their fact and seemingly non-discriminatory against Negroes, these are administered by taxing and voting officers of the State of Virginia in such a manner as to discriminate against Negroes.

We find no merit in this first contention of plaintiff. This Act of Congress, so far as relevant here, provides:

> "* * * the State of Virginia is admitted to representation in Congress as one of the States of the Union upon the following fundamental conditions:
>
> First, that the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the Constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all inhabitants of said State; PROVIDED, That any alteration of said Constitution, prospective in its effect, may be made in regard to the time and place of residence of voters. * * * provided that no amendment or revision shall be made which shall deny or in any way impair the right of suffrage or any civil or political right as conferred by this Constitution, except for causes which apply to all persons and classes without distinction."

It is extremely doubtful, even if Virginia has violated the conditions of this Act of Congress in Virginia's poll tax

laws, whether this presents a question justiciable in the courts. Such a matter is one peculiarly within the domain of Congress itself, since it only purports to set up a condition governing Virginia's right to admission to representation in Congress. If the establishment of the requirement of the payment of a poll tax as a prerequisite to the right to vote were to be considered as waived by Congress in view of the fact that Virginia has continued to be admitted to representation in Congress for a period of nearly half a century after the adoption of the poll tax requirement, and with this increasing representation in accordance with the increase in population. The Act of 1870, too, must be studied against the background of the Tragic Era of which it was a part.

Nor was this Act a compact under which Virginia, after the Civil War, was readmitted to the Union. The Supreme Court has ruled that the Confederate States were never out of the Union, and, hence, there was no necessity for readmission. Texas v. White, 74 U.S. 700.

This Act does not attempt to place Virginia in a straitjacket so far as the election laws of Virginia are concerned. If the Act made that attempt, the Act would be invalid. All states, after their admission into the Federal Union, stand upon an equal footing and the constitutional duty of guaranteeing each state a republican form of government gives Congress no power in admitting a state to impose restrictions which would operate to deprive that state of equality with other states. See, particularly, Coyle v. Smith, 221 U.S. 559, 570 573. And see, also, United States v. Chavez, 290 U.S. 357, 365; Hawkins v. Bleakly, 243 U.S. 210, 211; Stearns v. Minnesota, 179 U.S. 223, 244-245. So that, even if this Act of 1870 be valid and enforceable in the court, which is open to dispute, still the Virginia Constitution and the Virginia election laws have not been amended since 1870 to deprive the Negroes, as a class of citizens, of the right to vote.

To plaintiff's second contention—that the draftsmen of the Virginia Constitutional Convention were prompted by evil motives and that this alone invalidates the provisions of this Constitution and subsequent Virginia laws requiring

the payment of poll taxes as a prerequisite to voting—there are many answers.

It is admitted that some of the most vocal and violent members of that Convention expressed a desire and purpose to eliminate the Negro as a voter in Virginia. Yet even the most violent of these also expressed an intention to bring about this result by means that were valid under the Federal Constitution and Federal laws. And the expressions of these few can hardly be taken as necessarily voicing the dominant spirit of that Convention. For other voices were raised in the Convention to advance ideas couched in quite a different key.

Again, we are not proceeding entirely under the 1902 Constitution. There was a general revision of the Virginia Constitution ratified by the voters in June, 1928. This revision and subsequent statutes have eliminated many of the most objectionable features contained in the Constitution of 1902. Gone, for example, is the bad "Understanding Clause" by which many Negroes were unquestionably disfranchised. See Davy v. Allen, 157 Va. 84. So we cannot attribute to the draftsmen of the 1928 Constitution and all legislatures subsequent to 1902, the same motives (whatever these motives and however evil) which activated the members of the Constitutional Convention of 1902.

Finally, in this connection, it is well settled that a law that is fair on its face and is also fairly administered is not rendered invalid by the evil motives of its draftsmen. In Soon Hing v. Crowley, 113 U.S. 703, 710-711, Mr. Justice Field declared:

> "And the rule is general with reference to the enactments of all legislative bodies that the courts cannot inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferrible from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducements for

> their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile. And in the present case, even if the motives of the supervisors were as alleged, the ordinance would not be thereby changed from a legitimate police regulation, unless in its enforcement it is made to operate only against the class mentioned. * * *"

See, also, the opinion of Mr. Justice (afterwards Chief Justice) Stone in Sonzinsky v. United States, 300 U.S. 506, 513-14. In Williams v. Mississippi, 170 U.S. 213, 225, Mr. Justice Holmes said:

> "This comment is not applicable to the Constitution of Mississippi and its statutes. They do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them."

See, too, United States *v.* Des Moines Navigation and Railway Co., 142 U.S. 510.

This brings us to plaintiff's third contention—that the poll tax laws of Virginia, as prerequisites to voting, though fair on their face, are administered in such a manner as to discriminate against Negroes.

That such a law both fair on its face and also fairly administered does not offend the Federal Constitution is well settled. We quote from the opinion of Circuit Judge Soper (speaking for the Circuit Court of Appeals for the Fourth Circuit) in Saunders *v.* Wilkins, 152 F. 2d 235, 237:

> "* * * the decisions generally hold that a State statute which imposes a reasonable poll tax as a condition of the right to vote does not abridge the privileges or immunities of citizens of the United States which are protected by the Fourteenth Amendment. The privilege of voting is derived from the State and not from the national government. The qualifications of voters in an election for members of Congress is

set out in Article 1, Section 2, Clause 1, of the Federal Constitution which provides that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. The Supreme Court in Breedlove *v.* Suttles, 302 U.S. 277, 283, 58 S. Ct. 205, 82 L. Ed. 252, held that a poll tax prescribed by the Constitution and statutes of the State of Georgia did not offend the Federal Constitution. The court said (302 U.S. 277 at page 283, 58 S. Ct., at page 208, 82 L. Ed. 252):

" 'To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. Minor v. Happersett, 21 Wall. 162, 170 et seq. Ex parte Yarbrough, 110 U.S. 651, 664-665. McPherson *v.* Blacker, 146 U.S. 1, 37-38. Guinn *v.* United States, 238 U.S. 347, 362.' "

Equally clear is the principle that such laws, though fair on their face, are invalid if they are so administered as to effect a clear discrimination against Negroes. The classic expression of this view is found in the celebrated opinion of Mr. Justice Matthews in the well known case, involving discrimination against Chinese laundrymen, of Yick Wo *v.* Hopkins, 118 U.S. 356, 373-374:

"For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws

> which is secured to the petitioners, as to all other persons, by the board and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in Henderson *v.* Mayor of New York, 92 U.S. 259; Chy Lung *v.* Freeman, 92 U.S. 275; Ex parte Virginia, 100 U.S. 339; Noel *v.* Delaware, 103 U.S. 370; and Soon Ting *v.* Crowley, 113 U.S. 703."

Equally emphatic were the words of Mr. Justice Frankfurter in Lane *v.* Wilson, 307 U.S. 268, 275:

> "We, therefore, cannot avoid passing on the merits of plaintiff's constitutional claims. The reach of the Fifteenth Amendment against contrivances by a State to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions. • • • The Amendment nullifies sophisticated as well as simpleminded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race."

See, also Mitchell *v.* Wright, 154 F. 2d 924.

Has plaintiff, then, established the fact that the Virginia Constitutions and laws making the payment of poll taxes a prerequisite to voting have been administered in such a manner as to discriminate against Negroes? We think not.

We have already adverted to the fact that the oral evidence introduced before us failed utterly to show any discrimination against Negroes in the administration of the

Virginia poll tax laws as a prerequisite to voting. This brings us to a consideration of the exhibits filed by the plaintiff, which consist principally of statstics showing, as to the counties and cities of Virginia, the number of white persons and Negroes over the age of twenty-one years and the number of white persons and Negroes assessed for capitation taxes during the taxyear 1940.

As might be expected, the percentage of Negroes over twenty-one years of age who were assessed for poll taxes varies widely in different cities and counties of Virginia. A few examples taken from the Eighth Congressional District, which includes Arlington County, will illustrate this. Thus, in Goochland County, we find this percentage of Negroes assessed for poll taxes is very high, as out of a total Negro population of 2,270 over the age of twenty-one years, 2,244 were assessed and only 26 were not assessed; while Orange County reveals a correspondingly low percentage with only 506 Negroes assessed, and 1,324 not assessed. The City of Charlottesville showed 2,506 Negroes assessed with only 142 not assessed; the City of Alexandria showed 1,987 Negroes assessed, and 1,459 not assessed. In the whole State of Virginia, approximately 61% of the total number of Negroes over twenty-one years were assessed for poll taxes; approximately 76% of the white persons in the same category were assessed. The situation in the Eighth Congressional District is about the same as in the whole State of Virginia.

Certainly we cannot declare the Virginia poll tax laws invalid solely on these statistics upon the assumption that a difference of 15% in poll tax assessments between the Negroes and white persons warrants the conclusion that there is obvious discrimination in the administration of Virginia poll tax laws against the Negroes for the purpose of preventing Negroes from voting. And it is not difficult to discover many other reasons why fewer Negroes than white persons are assessed for poll taxes in Virginia.

Among the sources from which Virginia Commissioners of Revenue obtain the names of persons assessable for poll taxes are city directories, telephone directories, automobile licenses, recorded deeds and property assessments.

Manifestly, from these sources would be gleaned a much higher percentage of white persons than of Negroes.

Defendants had in the courtroom several Registrars and Commissioners of Revenue who were prepared to testify that the practices of their offices, in connection with the administration of the poll tax laws as prerequisites to voting were uniform as to white and colored persons, with no discrimination against the colored race. By consent of counsel on both sides, these witnesses were excused from testifying orally, in the light of stipulations 8 and 10, signed by counsel for both plaintiff and defendants. These two stipulations are herewith set out:

> "8. Attached hereto is a folder marked 'Exhibit #4' containing letters from Commissioners of the Revenue of counties and cities throughout the Commonwealth of Virginia regarding the practices followed by them in assessing capitation taxes. It is stipulated and agreed that if said Commissioners of the Revenue were called as witnesses on behalf of the defendants, they would testify under oath that the facts are as set out in their respective letters.
>
> • • • • • • •
>
> 10. Registrars generally throughout the State, if called as witnesses on behalf of the defendants, would testify under oath that it was their practice, without discrimination as to race or color, to inform applicants for registration who are ineligible because of failure to pay their capitation taxes that, if they apply to the Commissioner of the Revenue for assessment and pay the Treasurer the capitation taxes assessable against such applicants for the three years next preceding, they will be registered upon presentation of evidence that they have paid such taxes."

Statistics clearly prove that very few persons in Virginia pay poll taxes except as an incident to other taxes, such as property taxes and income taxes. We quote, however, from Section 58-1163 of the Virginia Code, which

provides a ready means for any person so desiring to pay poll taxes and thereby become eligible to vote in elections:

> "Any person assessable with capitation taxes for any year or years, who has not been assessed therewith, and any person who shall be assessable with such taxes for the ensuing year by reason of his becoming of age after the first of January in any year may apply to the commissioner of the revenue for the county or city in which he resides and have himself assessed with such omitted capitation taxes or with such capitation taxes as shall become assessable against him for the ensuing year by reason of his becoming of age after the first of January in any year. The commissioner of the revenue shall assess such person with such omitted capitation taxes or with such capitation taxes as will become assessable against him for the ensuing year by reason of his becoming of age after the first of January in any year and give such person a certificate of such assessment."

There is not a shred of evidence in the record of this case showing either that any Negro so applying has been refused assessment or that any white person, duly assessable, has been permitted to vote without payment of poll taxes. Nor does this record disclose, as plaintiff asserts, studied efforts on the part of Virginia tax officials to assess and compel white persons to pay capitation taxes so that they can vote and an equally studies failure on the part of these officials to do the same in the case of Negroes.

Plaintiff Butler was duly assessed for poll taxes for ten years. She paid none of these taxes. When she applied to Registrar Thompson for registration, she was told that she could not be registered without the payment of the requisite poll taxes but that she would be registered if she would pay these taxes. Plaintiff was thus duly informed of her rights. A similar answer would have been given, and has often been given, to a white person in the same situation as plaintiff. How, then, can this plaintiff maintain that she personally has been discriminated against by vir-

tue of her race, and how, then, can she properly bring a civil action based on race discrimination on behalf of herself and, as a class action, on behalf of others similarly situated?

Said Mr. Justice Holmes in Collins v. Texas, 223 U.S. 288, 295-296: "If he has not suffered, we are not called on to speculate upon other cases, or to decide whether the followers of Christian Science or other people might in some event have cause to complain." In like manner, in Murphy *v.* California, 225 U.S. 623, 630-631, Mr. Justice Lamar pointed out: "If, as argued, there is no reasonable basis for making a distinction between hotels with 25 rooms and those with 24 rooms or less, the plaintiff in error is not in position to complain, because not being the owner of one of the smaller sort, he does not suffer from the alleged discrimination." See, also, Stephenson *v.* Binford, 287 U.S. 251, 277-278; United States v. Murzbach, 280 U. S. 396, 399.

There is a primary presumption of the constitutionality of a State Statute in the light of the Federal Constitution and a strong showing must be made by the party attacking the constitutionality of the statute. United States *v.* Southeastern Underwriters, 322 U. S. 533; Osborn *v.* Ozlin, 310 U.S. 53; Merchants Mutual Automobile Liability Co. *v.* Smart, 267 U.S. 126; LaTourette v. McMaster, 248 U.S. 465. We think no such showing has been made by plaintiff in the instant case.

Plaintiff has sought not only equitable remedies but also damages for the alleged illegal refusal of defendant Thompson to register her as a voter. And a jury trial was asked by plaintiff on the question of damages. We had some doubt as to whether the three-judge court, after concluding that the legislative provisions of Virginia prescribing the payment of poll taxes as a prerequisite to voting were valid and that the equitable relief must be denied, had power to dismiss wholly this civil action, including the claim for damages. Happily, however, counsel for both plaintiff and defendants have agreed, and so informed the court, that if these poll tax provisions are found by us to be valid, the whole civil action, including the claim for damages,

may be dismissed. Since, as has been indicated, we find these provisions valid, we must therefore dismiss the plaintiff's suit.

This civil action of the plaintiff is dismissed.

Dismissed.

I concur:

(S.) STERLING HUTCHESON,
U. S. District Judge.

February 15, 1951.

I concur:

ALBERT V. BRYAN,
U. S. District Judge.

2-13-51.

* * * * * * *

APPENDIX K

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
At Alexandria

Civil Action No. 473

JESSIE BUTLER

v.

MARY A. THOMPSON, Central Registrar for the County of Arlington, Virginia, et als.

MEMORANDUM BY THE COURT

The Court has heard argument on the sole question raised by the motion to dismiss filed by the Attorney General of Virginia, and raised as one of the issues by the motion to dismiss filed by counsel for Mary A. Thompson, that is, whether the Court has jurisdiction to grant the injunctive relief prayed against the defendants. This issue did not include the question of the validity of the statutory and constitutional provisions of Virginia attacked in the com-

plaint. In brief, the proposition argued was that there was no power or right in a Federal court to grant equitable relief even in the event the attack on the validity of the Virginia statute and constitutional provision were sustained.

At the conclusion of the argument the Court asked counsel to submit their views on the necessity of convening, on the injunctive phase of this action, a three-judge court under the provisions of section 2281, Title 28, United States Code. Upon consideration of the memoranda received from counsel, the Court is of the opinion that the present issue of jurisdiction is to be decided by a single judge. Ex parte Poresky, 290 U.S. 30. The revision of Title 28 of the United States Code, effective September 1, 1948, requires a multiple-judge court for the grant of either a preliminary or permanent injunction, in certain instances, but it apparently has not altered the duty of the single judge to pass upon the jurisdictional issue.

Having studied the decisions cited in argument, the Court is of the opinion that the motions to dismiss should be denied. It is of the view that the case made by the complaint does not present a question of such political character as would exclude it from cognizance by the judicial arm of the Government. The cases relied upon by the defendants in support of their motion relate to supervision of elections or the "State's geographical distribution of electoral strength among its political subdivisions". Giles *v.* Harris, 189 U.S. 475; Wood *v.* Broom, 287 U.S. 1; Colegrove *v.* Green, 328, U. S. 549; MacDougall *v.* Green, 335 U.S. 281; South *v.* Peters (April 17, 1950) U.S. . The Court is of the opinion that the present suit asserts personal and individual rights and should be entertained as a civil action under sections 1331 and 1343, Title 28, United States Code. Michael v. Cockerell, 4th Cir., 161 F. 2d 163; Rice v. Elmore, 4th Cir. 165 F. 2d 387.

As already mentioned, counsel for the defendant Thompson has included in his motion to dismiss the additional ground that the Virginia statute and constitutional provision now assailed are clearly constitutional. This ground has not been argued by any party. From an examination of

the record it would seem to be a pivotal point in the case, and in order that it may be fully argued, the Court suggests that the Attorney General join in this motion, or amend his present motion by the addition of that ground, inasmuch as he has already indicated he would raise the issue in his answer. Not until this proposition is argued can the Court answer the query whether it is a case for a three-judge court. If the defendants should prevail on that point, it would seem to answer the question in the negative, and possibly dispose of the merits of the case. On the other hand, if the plaintiff is successful on that motion, the necessity for the convention of three judges would seem obvious.

Counsel for the plaintiff will present a draft of a decree embracing these views, after submitting it to opposing counsel for approval of its form.

(Sgd.) Albert V. Bryan
United States District Judge

Alexandria, Virginia
June 20, 1950.

APPENDIX L

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

At Alexandria

Civil Action No. 473

Jessie Butler

v.

Mary A. Thompson et al

On the 2nd day of June, 1950, came the plaintiff and the defendants by their attorneys, and thereupon the Court heard the arguments of counsel upon the motions of the defendants to dismiss the complaint on the ground that this Court had no jurisdiction to grant the injunction prayed

for, because the acts sought to be enjoined were political in character and not subject to judicial restraint or control, and upon the conclusion of said argument the Court took the said motions under advisement, and thereafter, on the 20th day of June, 1950, the Court filed its memorandum overruling the said motions, and, therefore, it is—

Ordered that, for the reasons set forth in said memorandum, the said motions be, and they are hereby, denied.

On the 24th day of July, 1950, again came the plaintiff and the defendants, by their attorneys, and, pursuant to the request of the Court in said memorandum, argued the question of whether a three-judge court should be convoked to hear the prayer of the complaint for an injunction, and also argued the motions of the defendants to dismiss the whole complaint on the ground, among others, that both the claim for damages and the application for an injunction were based on the allegation that the provisions of the constitution and statutes of Virginia, requiring the payment of a poll tax as a prerequisite to voting in the elections in said State, were invalid, while as a matter of law the said provisions are valid, and after the conclusion of said arguments, the Court announced its opinion that the case made by the complaint did not authorize the convening of a three-judge court, because there was no substantial Constitutional or Federal question presented by the complaint, the Supreme Court of the United States and the Court of Appeals for the Fourth Circuit having sustained the validity of such poll tax requirements as were embraced in the Virginia constitution and statutes, and that, as this Court, with a single judge, was without jurisdiction to consider on its merits the said application for injunction, the said motions to dismiss the application for injunction should be granted, and that the said motions should be granted as to the claim for damages because the said poll tax provisions are valid in law and the said complaint does not state a cause of action for recovery of damages, and, therefore, it is further

Ordered:

1. The complaint, insofar as it seeks an injunction, is dismissed for want of jurisdiction in the Court;

2. That the complaint, insofar as it seeks the recovery of damages, is dismissed upon the ground that it fails to state a claim upon which relief can be granted; and

3. That this action be dismissed and the defendants recover their costs of the plaintiff.

The plaintiff excepted to all of the rulings in this order.

(Sgd.) ALBERT V. BRYAN
United States District Judge

Alexandria, Virginia
July 29th, 1950.

APPENDIX M

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 6154

JESSIE BUTLER, APPELLANT

versus

MARY A. THOMPSON ET AL., APPELLEES

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria

Argued October 13, 1950. Decided October 16, 1950

Before PARKER, SOPER AND DOBIE, CIRCUIT JUDGES

John Locke Green and Frank L. Ball (J. Foster Hagan on brief) for Appellant, and Walter E. Rogers, Assistant Attorney General of Virginia, John W. Jackson, and J. Lindsay Almond, Jr., Attorney General of Virginia, for Appellees.

PER CURIAM:

This is an appeal in an action involving the constitutionality of provisions of the Constitution and statutes of the

State of Virginia, requiring the payment of poll tax as a prerequisite to voting. The plaintiff in the action is a Negro woman otherwise qualified to vote under the laws of Virginia who has been denied the right to register and vote because she has not paid poll tax. She asks that election officials of the state be enjoined from denying her the right to register and vote on the ground of the nonpayment of poll tax and that she be awarded damages for the wrong heretofore done in denying her that right. A court of three judges was demanded by plaintiff under 28 USCA 2281 and 2284, but was denied on the ground that the contention as to the unconstitutionality of the challenged provisions of the Constitution and statutes of Virginia did not present a substantial question and the action was dismissed.

The complaint alleges that the requirement of the payment of poll tax as a prerequisite to voting was one of several provisions inserted in the Constitution of Virginia for the purpose of denying to Negro citizens the right of suffrage and that it is now being administered in such a way as to discriminate against them and exclude large numbers of them from voting. In view of these allegations, we must hold that substantial questions are presented which require decision by a District Court of three judges, since the questions go to the constitutional validity of the challenged provisions of Virginia law.

As said by this Court in RICE v. ELMORE, 4 Cir. 165 F. 2d 387, 392:

> "The Fourteenth and Fifteenth Amendments were written into the Constitution to insure to the Negro who had recently been liberated from slavery, the equal protection of the laws and the right to full participation in the process of government. These amendments have had the effect of creating a federal basis of citizenship and of protecting the rights of individuals and minorities from many abuses of governmental power which were not contemplated at the time. Their primary purpose must not be lost sight of, however; and no election machinery can be upheld if its purpose or effect is to deny to the Negro, on account of his race or

> color, any effective voice in the government of his country or the state or community wherein he lives."

Pertinent to the point here involved is what was said by the District Court of three judges in Davis V. Schnell, 81 F. Supp. 872, 880, holding unconstitutional the Boswell amendment to the Constitution of Alabama prescribing an educational qualification for suffrage designed to disfranchise Negro voters. Said the Court:

> "It, thus, clearly appears that this Amendment was intended to be and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color. Therefore, we are necessarily brought to the conclusion that this Amendment to the Constitution of Alabama, both in its object and the manner of its administration, is unconstitutional, because it violates the Fifteenth Amendment. While it is true that there is no mention of race or color in the Boswell Amendment, this does not save it. The Fifteenth Amendment 'nullifies sophisticated as well as simple-minded modes of discrimination,' and 'It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.'"

The complaint in this case repeats allegations contained in the complaint in Michael v. Cockerell, 161 F. 2d 163, which was before us three years ago. Although the appeal in that case was dismissed as moot, we pointed out that the complaint raised questions of the gravest character, which, if the case were properly before us would merit our most careful consideration. We said:

> "The complaint and offers of proof raise questions of the gravest character, which, if presented in a case properly before us, would merit our most careful consideration. It is alleged that the provisions of the Constitution of Virginia with respect to the payment of poll tax as a prerequisite of voting were deliberately

adopted for the purpose of disfrancising negro citizens, that the debates and records of the constitutional convention so show, and that the provisions are at present administered for that purpose and with that effect. It is further alleged that thousands of citizens, white as well as colored, are denied the right to vote because of the way in which these provisions are administered, and that the right to vote is limited to such an extent that the republican form of government guaranteed by the Constitution of the United States is denied and the privileges and immunities of citizens of the United States are substantially abridged. There is allegation that as many as fifty thousand persons otherwise qualified are kept from voting in the congressional district in question as the result of the poll tax requirement, and that in the state at large it has resulted in less than 22% of those otherwise qualified participating in elections. We are not impressed by the argument that such grave violations of the constitutional rights of citizens as those here alleged present merely political questions with which courts are powerless to deal. In a case properly before us, it would be our duty to inquire whether upon the allegations and proofs rights of citizens guaranteed by the Constitution were being denied them and, if so, to grant appropriate relief."

There was error in refusing to take appropriate action for convening a statutory court of three judges to hear the case, as substantial constitutional questions were unquestionably involved.* We do not here attempt to pass upon these questions, as they are matters for the judgment of the three judge District Court, with review thereof, if any, by the Supreme Court of the United States.

The judgment dismissing the action will be reversed and the case will be remanded to the District Court, with direction that a court of three judges be constituted as required by statute to pass upon the questions involved.

Reversed and remanded with directions.

---

* See Report of Senate Judiciary Committee of the 77th Congress relating to poll tax; Senate Report No. 1662, 77th Cong. 2d Sess.; Cong. Rec. 77th Cong., 2d Sess., Vol. 88, pp. 9029-9031.

ARTICLE VI, UNITED STATES CONSTITUTION (Vol. II, O. S. 1931, p. 1608)

"Article VI.

* * * * *

"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."

* * * * *

7th Amendment, UNITED STATES CONSTITUTION (Vol. II, O. S. 1931, p. 1611)

"In suits at Common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

UNITED STATES CODE, TITLE 8—CHAPTER 2, Elective Franchise.

"Section 31. Race, Color, or Previous Condition not to Affect Right to vote.—All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; and constitution, law, custom, usage, or regulation of any State, or Territory, or by or under its authority, to the contrary notwithstanding." (R. S., Sec. 2004).

UNITED STATES CODE, TITLE 8,—CHAPTER 3, Civil Rights.

"Section 43. Civil Action for Deprivation of Rights.—Every person who, under color of any statute, ordinance,

regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." (R. S. Sec. 1979).

TITLE 28, U. S. C., Sec. 41 (Mason Code, Vol. 2, p. 1972):

"Section 41. (Judicial Code, Section 24, Amended.) Original Jurisdiction.

The district courts shall have original jurisdiction as follows:

"(1) United States as plaintiff; civil suits at common law or in equity. First. Of all suits of a civil nature, at common law or in equity * * * or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, * * *. The foregoing provision as to the sum or value of the matter in controvery shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. (R. S. Secs. 563, 629; Mar. 3, 1875, c. 137, Sec. 1, 18 Stat. 470; Mar. 3, 1887, c. 373, Sec. 1, 24 Stat. 552; Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433; Mar 3, 1911, c. 231, Sec. 24, 36 Stat. 1091)".

Title 28, U. S. C., Sec. 41, Subdivision (14) (Vol. 2, Mason p. 1991, defining jurisdiction of District Courts):

* * * * *

"(14) Suits to redress deprivation of civil rights.—Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States or of any right secured by any law of the United States, providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (R. S. Sec. 563, par. 12, Sec. 629, par. 16; Mar. 3, 1911, C. 231, Sec. 24, par. 14, 36 Stat. 1092.)"

APPENDIX N

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

At Alexandria.

Civil Action No. 473

JESSIE BUTLER, PLAINTIFF

v.

MARY A. THOMPSON, CENTRAL REGISTRAR FOR THE COUNTY OF ARLINGTON, VIRGINIA, Court House Square, Arlington, Va.;

LEVIN NOCK DAVIS, SECRETARY STATE BOARD OF ELECTIONS, RICHMOND, VIRGINIA, whose residence is at Accomack, Virginia;

MATT G. ANDERSON, MEMBER, STATE BOARD OF ELECTIONS, RICHMOND, VIRGINIA, whose residence is at Oilville, Virginia;

ROBERT C. BAYLISS, MEMBER, STATE BOARD OF ELECTIONS, RICHMOND, VIRGINIA, whose residence is at Richmond, Virginia;

MARIE H. EWERS, ONE OF THE JUDGES OF ELECTION AT WOODLAWN PRECINCT, ARLINGTON COUNTY, VIRGINIA, whose residence is 4901 N. 13th Street, Arlington, Virginia;

ROBERT HILLEARY, ONE OF THE JUDGES OF ELECTION AT WOODLAWN PRECINCT, ARLINGTON COUNTY, VIRGINIA, whose residence is 1547 N. Ivanhoe Street, Arlington, Virginia

and

EILEEN B. GILLIGAN, ONE OF THE JUDGES OF ELECTION AT WOODLAWN PRECINCT, ARLINGTON COUNTY, VIRGINIA, whose residence is 5304 N. 18th Street, Arlington, Virginia, DEFENDANTS.

ORDER

This action came on this day to be heard on the amended complaint filed November 11, 1950, the motions to dismiss the amended complaint filed by Mary A. Thompson, the motions to dismiss filed by Levin Nock Davis, Matt G. Anderson, Robert C. Bayliss, Marie H. Ewers, Robert Hilleary, and Eileen B. Gilligan, the answers filed by each of the defendants, the stipulation of facts agreed to by all

parties together with the exhibits made a part thereof, the evidence heard ore tenus and was argued by counsel and submitted to the Court for final decree.

Findings of Fact and Conclusions of Law

The Court, having heretofore rendered and filed with the Clerk a written opinion in this action, which opinion was concurred in by all members of the Court and in which the Court's findings of fact and conclusions of law are fully set forth, does hereby adopt the same as its findings of fact and conclusions of law as if the same were fully set forth in this order.

Judgment

For the reasons set forth in said opinion, it is Adjudged, Ordered and Decreed that the complaint of Jessie Butler against the defendants herein be, and the same is, hereby dismissed.

It is further Adjudged, Ordered and Decreed that the defendants have and recover from the plaintiff their costs in this action. Nothing further remaining to be done, this action is ordered dismissed and removed from the docket.

/s/ ARMISTEAD M. DOBIE
United States Circuit Judge

/s/ STERLING HUTCHESON
United States District Judge

/s/ ALBERT V. BRYAN
United States District Judge

MARCH 12, 1951.

We ask for this:

/s/ J. LINDSAY ALMOND, JR., *Attorney General of Virginia*
/s/ WALTER E. ROGERS
/s/ JOHN W. JACKSON

Seen by counsel for Plaintiff
Counsel for the Defendants

/s/ JOHN LOCKE GREEN
/s/ FRANK L. BALL, and excepted to as being contrary to the law and the evidence.

(4700)

MAY 2 1951

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 713

JESSIE BUTLER,

Appellant

v.

MARY A. THOMPSON, LEVINE NOCK DAVIS, MATT G. ANDERSON, MARIE H. EWERS, ROBERT HILLEARY, EILEEN B. GILLIGAN,

Appellees

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

J. LINDSAY ALMOND, JR.,
Attorney General of Virginia,
State Supreme Court Building,
Richmond, Virginia.

WALTER E. ROGERS,
Special Assistant to Attorney General,
American Building,
Richmond, Virginia.

JOHN W. JACKSON,
538 Investment Building,
Washington, D. C.
Counsel for Appellees

INDEX

Subject Index

	Page
Statement of Appellees Opposing Jurisdiction and Motion to Dismiss or Affirm	1
I. The State Constitutional and Statutory Provisions Involved and the Nature of the Case	2
A. The State Constitutional and Statutory Provisions	2
B. The Proceedings Below	10
The Question Presented	17
II. Argument:	
The Constitutionality of the Capitation Tax as a Prerequisite to Vote	18
Conclusion	22

Table of Cases Cited

Breedlove v. *Suttles*, 302 U. S. 277	18
Butler v. *Thompson, et al.*, 184 Fed. (2d) 526	12
Coyle v. *Smith*, 221 U. S. 559	20
Davis v. *Allen*, 157 Va. 84	9
Hawkins v. *Bleakley*, 243 U. S. 210	20
Pirtle v. *Brown*, 118 F. 2d 218, Certiorari denied 314 U. S. 621	19
Saunders v. *Wilkins*, 152 F. 2d 235 Certiorari denied 328 U. S. 870	21
Stearns v. *Minnesota*, 179 U. S. 223	20
Texas v. *White*, 74 U. S. 700	20
United States v. *Chavey*, 290 U. S. 357	20
United States v. *Texas*, 339 U. S. 707	20
United States v. *Utah*, 283 U. S. 64	20
Virginia v. *West Virginia*, 246 U. S. 565	20
Williams v. *Mississippi*, 170 U. S. 213	19

Constitutional and Statutory Provisions Cited

Constitution of United States, Article 15, Sections 1 and 2	19

	Page
Constitution of Virginia:	
Article XVII	5
Sections 18 and 19	3
Section 20	5
Sections 21 and 22	5
Section 173	5
Constitution of Virginia of 1902:	
Section 18	3, 6
Section 19	3, 6
Section 20	3, 5, 7
Section 21	4, 8, 9
Act of Congress of January 26, 1870, Virginia	19
Act of General Assembly of Virginia of 1928, Chapter 205	6
Code of Virginia:	
Sections 24-17, 24-67, 24-68, 24-69	5
Section 58-49	5
Section 58-1163	14

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 713

JESSIE BUTLER,

Appellant

vs.

MARY A. THOMPSON, LEVINE NOCK DAVIS, MATT G. ANDERSON, MARIE H. EWERS, ROBERT HILLEARY, EILEEN B. GILLIGAN,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA

STATEMENT OF APPELLEES OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The appellees, believing that the matters set forth herein will demonstrate the lack of substance in the questions raised by this appeal, file this statement in opposition to the Appellant's statement as to jurisdiction. Appellees include herein its motion to dismiss the appeal or in the alternative, to affirm the judgment and decree of the United States District Court for the Eastern District of Virginia at Alexandria on the ground that the questions raised by

the appeal are so unsubstantial as not to need further argument and on the ground that the appeal presents no questions not previously adjudicated by this Court adversely to the contentions of the Appellant.

I

The State Constitutional and Statutory Provisions Involved and the Nature of the Case.

A.

The State Constitutional and Statutory Provisions

This case arose out of the refusal of the Registrar of Arlington County, Virginia, to register the appellant as a qualified voter of Virginia. When the appellant applied to Mary A. Thompson, Central Registrar for the County of Arlington, Virginia, for registration, one of the appellees here, it appeared that the appellant had not paid the capitation taxes assessable against her for the preceding three years as required by the Constitution and Statutes of Virginia as a prerequisite for registration and voting in Virginia. The Registrar therefore informed the appellant that she could not be registered, but the appellant was further informed that if she took the necessary action to pay such taxes as required and presented evidence of such fact then she would be registered as provided by law. The appellant refused to comply with the constitutional and statutory provisions requiring the payment of the capitation taxes as a qualification for registration and instituted this proceeding in which she attacked the validity of such provisions.

Thus the only question presented by this appeal is whether the provisions of the Constitution of Virginia and the statutes enacted pursuant thereto which prescribe the payment of capitation taxes as a prerequisite to the right

to register and vote are valid under the Constitution of the United States.

The pertinent provisions of the Constitution of Virginia are Sections 18, 19, 20 and 21 which read as follows:

> § 18. Qualification of voters.—Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved until the expiration of thirty days after such removal.
>
> The right of citizens to vote shall not be denied or abridged on account of sex.
>
> § 19. Registration of voters; those registered prior to nineteen hundred and four.—Persons registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, whose names were required to be certified by the officers of registration for filing, record and preservation in the clerks' offices of the several circuit and corporation courts, shall not be required to register again, unless they shall have ceased to be residents of the State, or became disqualified by section twenty-three.
>
> § 20. Who may register.—Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided:
>
> First. That he has personally paid to the proper officer all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register; or, if he come of age at

such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

Second. That, unless physically unable, he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for the one year next preceding, and whether he has previously voted, and, if so, the State, county, and precinct in which he voted last; and,

Third. That he answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the registration officer, which questions, and his answers thereto, shall be reduced to writing, certified by the said officer, and preserved as a part of his official records.

§ 21. Conditions for voting.—A person registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, or under the last section, shall have the right to vote for all officers, elective by the people, subject to the following conditions:

That unless exempted by section twenty-two, he shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote.

If he shall have registered after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe; but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate.

Section 22 referred to in Section 21 provides that no person, nor the wife or widow of such person who, during the war between the States, served in the Army or Navy of the United States, or the Confederate States or of any State of the United States, or of the Confederate States shall be required to pay a poll tax as a prerequisite to the right to vote. Article XVII of the Constitution of Virginia provides that all members of the armed forces of the United States, while in active service in time of war, present or future, are exempt from registering and paying a poll tax as the prerequisite to the right to vote.

Section 173 of the Constitution of Virginia is the section requiring the General Assembly to levy a poll tax of, and not exceeding one dollar and fifty cents per annum on every resident of the State not less than twenty-one years of age, except those pensioned by the State for military services. Section 58-49 of the Code of Virginia is the statute levying the tax prescribed by Section 173 of the Constitution.

Sections 24-17, 24-67, 24-68, and 24-69 of the Code of Virginia parallel the provisions of Sections 18, 20, and 21 of the Virginia Constitution.

The sole question presented by this case is whether that portion of Section 20 of the Constitution of Virginia which provides that *every* citizen of the United States having the prescribed qualifications of age and residence shall be entitled to register provided he has paid all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register is valid. Thus it is only the first subdivision of said Section 20 which is called into question.

It is necessary to point out here that the provisions of the Constitution of Virginia relating to the question at issue were provisions adopted in 1928 at which time the Constitution of Virginia was subject to a general revision approved by the voters of the Commonwealth at a referen-

dum held pursuant to an act of the General Assembly of Virginia. See Chapter 205, Acts of the General Assembly of Virginia of 1928. *We are thus not concerned with the Constitutional provisions adopted by the Constitutional Convention of 1902,* but rather with those provisions adopted by the voters of the State in 1928.

We point this out because the Appellant has attempted to build her whole case around a few remarks made by a few members of the Constitutional Convention of 1902 which related to provisions which are no longer incorporated in the Constitution of Virginia. The present provisions relating to the elective franchise differ in material respects from those adopted in 1902. Sections 18, 19, 20, and 21 of the 1902 Constitution read as follows:

> § 18. Qualifications of voters.—Every male citizen of the United States, twenty-one years of age, who has been a resident of the State two years, of the county, city, or town one year, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal.
>
> § 19. Registration of voters; who are entitled to register prior to 1904. There shall be general registrations in the counties, cities and towns of the State during the years nineteen hundred and two and nineteen hundred and three at such times and in such manner as may be prescribed by an ordinance of this Convention. At such registrations every male citizen of the United States having the qualifications of age

and residence required in section Eighteen shall be entitled to register, if he be:

First. A person who, prior to the adoption of this Constitution, served in time of war in the army or navy of the United States, of the Confederate States, or of any State of the United States or of the Confederate States; or,

Second. A son of any such person; or,

Third. A person, who owns property, upon which, for the year next preceding that in which he offers to register, State taxes aggregating at least one dollar have been paid; or,

Fourth. A person able to read any section of this Constitution submitted to him by the officers of registration and to give a reasonable explanation of the same; or, if unable to read such section, able to understand and give a reasonable explanation thereof when read to him by the officers.

A roll containing the names of all persons thus registered, sworn to and certified by the officers of registration, shall be filed, for record and preservation, in the clerk's office of the circuit court of the county, or the clerk's office of the corporation court of the city, as the case may be. Persons thus enrolled shall not be required to register again, unless they shall have ceased to be residents of the State, or become disqualified by section Twenty-three. Any persons denied registration under this section shall have the right of appeal to the circuit court of his county, or the corporation court of his city, or to the judge thereof in vacation.

§ 20. Who may register after 1904.—After the first day of January, nineteen hundred and four, every male citizen of the United States, having the qualifications of age and residence required in section Eighteen, shall be entitled to register, provided:

First. That he has personally paid to the proper officer all State poll taxes assessed or assessable against him, under this or the former Constitution, for

the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

Second. That, unless physically unable, he make application to register in his own hand-writing, without aid, suggestion, or memorandum, in the presence of the registration officers, stating therein his name, age, date and place of birth, residence and occupation at the time and for the two years next preceding, and whether he has previously voted, and, if so, the state, county and precinct in which he voted last; and,

Third. That he answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the officers of registration, which questions, and his answers thereto, shall be reduced to writing, certified by the said officers, and preserved as a part of their official records.

§ 21. Conditions for voting.—Any person registered under either of the last two sections, shall have the right to vote for members of the General Assembly and all officers elective by the people, subject to the following conditions:

That he, unless exempted by section Twenty-two, shall, as a prerequisite to the right to vote after the first day of January, nineteen hundred and four, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote; provided that, if he register after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot without aid, on such printed form as the law may prescribe; but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate.

It is to be noted that, in addition to certain changes in the residence requirement, the special conditions for registration during the years 1902 and 1903, formerly contained in Section 19, are no longer a part of the Constitution. It was this section which, in its Fourth subdivision, formerly provided for a so-called "understanding" test. This "understanding clause" has now been completely eliminated. In fact by its own terms it was never effective after 1903.

The appellant has attempted to maintain that the clause designated "Third" in the present Section 20 (which was also in the Constitution of 1902 in addition to the true "understanding clause" contained in former Section 19) provides for an educational test subject to abuse by the registration officials. However, the third clause of Section 20 was construed by the Supreme Court of Appeals of Virginia in the case of *Davis* v. *Allen*, 157 Va. 84, in which the Court referred to the fact that the Debates of the Constitutional Convention conclusively showed that that body rejected the principle of a permanent understanding clause. The Court held that the third clause of Section 20 could not be construed as authorizing an understanding test and only justified questions as to technical qualifications such as age and residence and the like.

While the present Section 19 provides that those who registered under the general registration of 1902 and 1903 shall not be required to register again, there has never been a requirement of registration of persons registering after 1903, and all persons, unless exempted for military service, are required to pay their capitation taxes to be entitled to vote regardless of when they registered. See Section 21.

B

The Proceedings Below

The Appellant, after she was refused registration by the Central Registrar of Arlington County, Virginia, instituted this action against the Registrar, the three judges of Woodlawn Precinct, Arlington County and the three members of the State Board of Elections of the Commonwealth of Virginia. The appellant alleged that she was refused registration for the sole reason that she had not paid the poll or capitation tax required under the Constitution and statutes of Virginia.

The appellant, a Negro, alleged that such poll tax provisions were unconstitutional on the ground that they denied Negroes the right to vote because of their race or color and she asked for a declaratory judgment adjudicating such provisions to be invalid and sought a mandatory injunction to require the registrar to register her, to require the defendant members of the State Board of Elections to instruct registrars to permit Negroes to register and to require the three judges of election of Woodlawn precinct to permit the appellant to vote in all future elections notwithstanding her non-payment of her poll taxes. The appellant also asked damages against the defendant, Mary A. Thompson, because of the failure of that defendant to register the appellant.

The substance of the complaint filed by the appellant in the District Court was that the Constitutional Convention of Virginia of 1901 and 1902 was an alleged conspiracy having as its purpose the disfranchisement of the Negro and that this alleged conspiracy was furthered by numerous registrars throughout Virginia by using the "understanding" clause and other devices, as written into the Constitution of 1902 to prevent Negroes from voting. The appellant

alleged, with respect to the poll or capitation tax, that only a small fraction of the 364,411 Negroes twenty-one years of age, or over, in Virginia were assessed with such taxes and were thus disfranchised in violation of the Constitution of the United States. However, no allegations were made in the complaint that the Registrar of Arlington County or any other official of Arlington County participated in any way in any such alleged conspiracy, nor was it alleged that the appellant was subjected to any "understanding" test or that she had not been assessed with poll taxes. There was no allegation that she had been treated in any way different from any other citizen of Arlington County or that she had been discriminated against in any way because of her race or color.

The defendants moved to dismiss the complaint as failing to state a claim entitling the plaintiff to relief against the defendants. By their motions, the defendants asserted that the provisions of the Constitution and statutes of Virginia prescribing the qualifications and requirements that must be met to entitle a person to register and vote in Virginia were in every respect valid and that the complaint had not charged that the defendants had participated in any conspiracy to prohibit Negroes from voting or in any way interfered with the right of the plaintiff or any other person to register and vote on account of her or his race or color. Nor had the plaintiff charged that anyone had interfered with her right to vote because of her race or color.

The District Judge held that, since there was no immediate question presented by this case of race or color, the complaint charging no conspiracy, misconduct or maladministration of the poll tax provisions of the Constitution and statutes of Virginia on the part of the defendants, the sole question presented was the validity of the poll tax provisions, as such, under the Constitution of the United States. Since similar provisions had been upheld by the Supreme

Court of the United States, the District Judge held further that no substantial constitutional question was presented requiring the convening of a three judge tribunal and ordered the case dismissed.

That ruling of the District Court was appealed to the United States Circuit Court of Appeals for the Fourth Circuit which held that the general allegations of the complaint that the requirement of the payment of a poll tax as the prerequisite to voting was one of several provisions inserted in the Constitution of Virginia for the purpose of denying to Negroes the right of suffrage and the allegations that it was being administered in such a way as to discriminate against Negroes and to exclude large numbers of them from voting presented substantial questions which required decision by a District Court of three Judges since the questions go to the constitutional validity of the challenged provisions of the Virginia law. Without attempting to pass upon the questions, the Circuit Court remanded the case to the District Court with direction that a court of three judges be constituted as required by statute to hear the case and pass upon the charges made. See *Butler* v. *Thompson, et al.*, 184 Fed. (2d) 526.

Upon the remand of the case to the District Court, a three judge Court composed of Judges Armistead M. Dobie, United States Circuit Judge, Fourth Circuit, Albert V. Bryan, United States District Judge, and Sterling Hutcheson, United States District Judge, was constituted to hear the case and pass upon the questions involved. The defendants filed answers denying the allegations of the complaint that the purpose of the Constitutional Convention of Virginia of 1901 and 1902 was to disfranchise the Negro and denying that the Constitutional and statutory provisions of Virginia relating to the elective franchise were being administered in a discriminatory manner to keep the Negro from voting. The defendants renewed all

motions previously made, and filed, in addition, a motion to strike certain allegations of the complaint as being immaterial.

The three judge court, without ruling upon the motions, set the case for hearing on all issues and gave the appellant an opportunity to present evidence in support of the allegations of the complaint. As will appear from the opinion of the three judge court, written by Dobie, Circuit Judge, and concurred in by the other two members of the Court, the appellant presented only three witnesses and not one shred or scintilla of evidence was evoked from them that even had a tendency to support the plaintiff's contentions that the franchise laws of Virginia were administered in a manner which discriminated against the Negro. In fact the only testimony given by these witnesses on the matter was the testimony of witness Trice that to the best of his knowledge, the practices and procedures in administering the poll tax laws as a prerequisite to voting were precisely the same as to Negroes and white persons and that he knew of no instance of the administration of these laws which discriminated against Negroes.

The defendant Thompson (the Central Registrar of Arlington County, testified that the practices and procedures of her office were precisely the same as to both Negroes and white persons and that, both as to the plaintiff and others offering to register, there was no discrimination whatever against members of the Negro race. She further testified that she offered to register the plaintiff if plaintiff would pay the required poll tax. The defendants had in the courtroom several other Registrars who were prepared to testify that the practices of their offices were uniform as to white and colored persons, with no discrimination against the colored race, but since the plaintiff had presented no evidence to establish such alleged discrimination, they were by consent of counsel on both sides,

excused from testifying orally, counsel for the plaintiff waiving cross-examination. It was stipulated that Registrars generally throughout the State, if called as witnesses, would testify that there was no discrimination as to race or color.

The appellant had alleged in her complaint that in the administration of the poll tax provisions, there had been a deliberate practice on the part of the Commissioners of the Revenue to fail to assess Negroes with the alleged result that the overwhelming majority of those not assessed were Negroes. No evidence whatsoever was presented by the appellant to support such allegations. Letters from some eighty odd Commissioners of the Revenue of cities and counties throughout Virginia stating the practices and procedures followed by them in assessing capitation or poll taxes were filed as an exhibit and it was stipulated that, if called as witnesses, they would testify to the facts stated by them in their letters. Among the sources of information used by them were returns filed by the taxpayers, city directories, telephone directories, automobile licenses, recorded deeds, property assessments, city water and sewer connections, and in many cases a house to house canvass. They all stated that they made no discrimination between Negroes and white persons. It is apparent from their statements that the slight difference in the percentage of whites assessed and Negroes assessed arises because of the reluctance of the Negro to declare himself for taxation and the greater difficulty in securing information as to the persons of that race who are assessable.

Section 58-1163 of the Code of Virginia provides that any person assessable with capitation taxes may apply to the Commissioner of the Revenue of his locality and have himself assessed. As pointed out by the Court below in its opinion, "There is not a shred of evidence in the record of this case showing either that any Negro so applying has

been refused assessment or that any white person duly assessable, has been permitted to vote without payment of poll taxes. Nor does this record disclose, as plaintiff asserts, studied efforts on the part of Virginia tax officials to assess and compel white persons to pay capitation taxes so that they can vote and an equally studied failure on the part of these officials to do the same in the case of Negroes." Moreover the record shows that the appellant herself was in fact duly assessed with capitation taxes for a period of ten years.

Tables giving the statistics on the number of white persons and Negroes of assessable age in Virginia and the number of each class which were actually assessed were filed as exhibits in the case and completely refuted the charge that there was a deliberate practice to refuse to assess Negroes or that the overwhelming majority of those not assessed were Negroes. For 1940, the last year which could be compared with an official census, the statistics show that of all Negroes of assessable age in Virginia 61.6 per cent were actually assessed while in the case of white persons the percentage was only 76.1, there being 224,567 Negroes out of 364,411 assessed and 922,399 white out of 1,211,070 who were assessed. Of those not assessed more than two-thirds were white persons, there being 288,731 whites not assessed and only 139,844 Negroes not assessed. While, percentage-wise, more whites than Negroes were assessed, the evidence of the Commissioners of the Revenue clearly establish that there was no failure to assess any Negro because of his race or color and that any Negro who applied for assessment was assessed.

To support the allegation that the purpose of the Constitutional Convention of Virginia of 1901 and 1902 was to disfranchise the Negro, the appellant referred to several statements made in the speeches of a few of the Delegates to the convention. While some members of the convention

indicated a belief that the majority of Negroes were uneducated and ignorant and for that reason should not be entitled to vote, even they recognized that they could not make discriminations based on race or color and could only adopt restrictions applicable to whites and Negroes alike. Moreover, as the Court below pointed out in its opinion, the expressions of these few can hardly be taken as necessarily voicing the dominant spirit of the convention as there were other voices raised in the convention to advance ideas couched in quite a different way. In fact a careful reading of the debates, particularly that part dealing with the consideration of the franchise provisions, will show that those advocating stringent requirements which could have been used to restrict the Negro vote did not prevail in the convention, since they advocated a permanent "understanding clause" (the main subject of the debate on the elective franchise) and this was rejected by the convention in favor of an understanding clause effective only in 1902 and 1903 and which is now no part of the Constitution of Virginia.

The Court below thus found, after hearing all the evidence presented with respect to the allegations made by the appellant, that there was no foundation whatsoever in the charge that the provisions of the Constitution and statutes of Virginia were designed to keep the Negro from voting or that they were being administered in a manner which discriminated against anyone because of race or color.

This case had been remanded by the Circuit Court of Appeals of the Fourth Circuit to the District Court in order that a three judge court could inquire into and determine whether these charges were grounded upon fact, and when given an opportunity to present evidence in support of her charges the appellant presented "not a shred or scintilla of evidence," to use the words of the Court below, to sustain her charges.

We have felt it necessary to review somewhat at length

the course of the proceedings below and the evidence which was presented to the lower Court since the appellant is seeking to present the case to this Court on the basis of the allegations contained in her complaint as if such allegations had been conclusively established by proof, when in fact no evidence at all was presented to the Court below to sustain them, and on the contrary the evidence before that Court completely refuted the charges made by the appellant.

Since there was no evidence to support the allegations of the appellant that the franchise laws of Virginia were administered in a manner which discriminated against Negroes, the only question remaining for decision by the Court below was whether the requirement of the payment of a poll tax as a prerequisite to vote was in and of itself invalid. Since the Constitutional and statutory provisions of Virginia prescribing such requirement were applicable to all persons alike without discrimination as to race and color, and since such a requirement had been held by the Supreme Court of the United States to violate no provision of the Constitution of the United States, the Court below held the provisions under attack to be valid and dismissed the action of the appellant.

The Question Presented

The sole question presented by this appeal is whether a requirement of the payment of a poll tax as a prerequisite to the right to register and vote, which requirement is applicable to all alike regardless of race or color, is in and of itself in violation of the Constitution of the United States.

While the appellant, in setting forth her assignments of error and in her phrasing of the questions presented and in the argument contained in her Statement As To Jurisdiction, has attempted to present other questions, she has done so by considering the allegations made in her complaint as having been established by the evidence while, in fact, no

evidence was presented to support such allegations and the Court below held that they were completely refuted by the evidence presented to it.

As pointed out above, the appellant having failed to sustain her allegations of maladministration of the franchise laws of Virginia, the only question open for consideration by this Court is whether the poll tax provisions of the Virginia Constitution and statutes are per se in violation of the Federal Constitution.

II

ARGUMENT

The Constitutionality of the Capitation Tax as a Prerequisite to Vote

This issue has been discussed so much in recent years both in the Courts and in Congress that we feel that nothing new can be added now. In *Breedlove* v. *Suttles*, 302 U.S. 277, this Court held that a poll tax prescribed by the Constitution and Statutes of the State of Georgia did not offend the Federal Constitution. The Court said:

> "To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the Fourteenth Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate. *Minor* v. *Happersett*, 21 Wall. 162, 170 et seq., 22 L. ed. 627, 629; Ex parte Yarbrough, 110 U. S. 651, 664, 665, 28 L. ed. 274, 275, 4 S. Ct. 152; *McPherson* v. *Blacker*, 146 U. S. 1, 37, 38, 36 L. ed. 869, 878, 13 S. Ct. 3; *Guinn* v. *United States*, 238 U. S. 347, 362, 59 L. ed. 1340, 1346, 35 S. Ct. 926, L.R.A. 1916A, 1124. The privileges and immunities protected are only those that arise from the Constitution and laws of the United States and not those

that spring from other sources. *Hamilton* v. *University of California,* 293 U. S. 245, 261, 79 L. ed. 343, 351, 55 S. Ct. 197." 302 U. S. 277 at page 283

See also *Williams* v. *Mississippi* 170 U. S. 213; *Pirtle* v. *Brown,* (6th Cir.) 118 F. 2d 218, *Certiorari* denied 314 U.S. 621; *Saunders* v. *Wilkins,* 152 F. 2d 235, *Certiorari* denied 328 U. S. 870.

Appellant contends that by the Act of January 26, 1870, Virginia was prohibited from imposing a poll tax as a prerequisite to the right to vote. That Act so far as relevant here provides:

> "* * * * the State of Virginia is admitted to representation in Congress as one of the States of the Union upon the following fundamental conditions:
>
> 'First, that the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all inhabitants of said State; PROVIDED, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters.' "

In her Statement As To Jursdiction, the appellant asserts that this Act of Congress was passed under the authority of Section 2 of the Fifteenth Amendment giving Congress authority to enforce by appropriate legislation the provision of Section 1 which reads as follows:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

So construed (and it must be so construed to be valid itself) that act has been in no way violated by the Virginia Poll Tax provisions since they apply to all alike regardless of race, color, or previous condition of servitude. Construed any other way, the Act of Congress would be clearly invalid.

Congress could not by the Act of Readmission of Virginia to representation in Congress, have placed Virginia in a Constitutional strait-jacket so far as the elective franchise is concerned. First, it cannot be said that the act was a so-called compact under which Virginia was being readmitted to the Union, since the Confederate States were never out of the Union and, hence, there was no necessity for readmission. *Texas* v. *White,* 74 U. S. 700. Second, when a State is admitted to the Union, it is so admitted with all the powers of sovereignty and jurisdiction which pertained to the original states, and such powers may not be constitutionally diminished, impaired or shorn away by any new conditions, compacts or stipulations embraced in the act under which the new state comes into the Union. All states, after admission into the Union, stand upon the same footing and the Constitutional duty of guaranteeing each state a republican form of government gives Congress no power to impose restrictions in admitting a new state which deprive it of equality with other states. *Coyle* v. *Smith,* 221 U.S. 559; *United States* v. *Texas,* 339 U. S. 707; *Virginia* v. *West Virginia,* 246 U. S. 565; *Hawkins* v. *Bleakley,* 243 U. S. 210; *United States* v. *Utah,* 283 U. S. 64; *United States* v. *Chavey,* 290 U. S. 357; *Stearns* v. *Minnesota,* 179 U.S. 223.

As pointed out by the Court below, even if it be considered that Virginia violated the conditions of the Act of Congress, such a matter is one peculiarly within the domain of Congress itself, since the Act only purports to set up a condition governing Virginia's right to admission in Con-

gress. Such a matter does not present a justiciable question. *Saunders* v. *Wilkins*, 152 F. 2d 235, *Certiorari* denied 328 U. S. 870.

Obviously Congress intended the Act to forbid only restrictions upon the right of franchise based upon discriminations as to race, color or previous conditions of servitude. It was clearly not intended to forbid such requirements as, for example, that application for the registration be made in the handwriting of the applicant. Yet such would have been prohibited just as much as a poll tax requirement if any other construction were placed upon the Act.

If the establishment of the requirement of the payment of a poll tax as a prerequisite to the right to vote were to be considered as a violation of the condition prescribed in the Act of 1870, it would be a matter solely for action by Congress. Any such condition must be considered as having been waived by that body in view of the fact that Virginia has continued to be admitted to representation in Congress for a period of nearly half a century after adoption of the poll tax requirement, and this with increasing representation in accordance with the increase in population.

Conclusion

Wherefore, the appellees respectfully submit this statement showing that the questions upon which the decision of this cause depends are so unsubstantial as not to need further argument, and the appellees respectfully move the Court to dismiss the appeal, or, in the alternative, to affirm the judgment and decree entered in this cause by the United States District Court for the Eastern District of Virginia, at Alexandria.

Respectfully submitted

J. Lindsay Almond, Jr.,
Attorney General of Virginia

Walter E. Rogers,
Special Assistant to Attorney General

John W. Jackson,
Counsel for Mary A. Thompson, Levine Nock Davis, Matt G. Anderson, Marie H. Ewers, Robert Hilleary, Eileen B. Gilligan, Appellees.

(4685)

MAY 2 1951

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 713

JESSIE BUTLER,

Appellant,

vs.

MARY A. THOMPSON, LEVIN NOCK DAVIS, MATT G. ANDERSON, MARIE H. EWERS, ROBERT HILLEARY, EILEEN B. GILLIGAN,

Appellees

BRIEF OF APPELLANT REPLYING TO APPELLEES' STATEMENT IN OPPOSITION TO JURISDICTION, AND OPPOSING APPELLEES' MOTION TO DISMISS OR AFFIRM.

JOHN LOCKE GREEN,
Court House,
Arlington, Va.;
FRANK L. BALL,
Court House Square,
Arlington, Virginia,
Attorneys for Appellant.

APRIL 10, 1951.

INDEX

Subject Index

	Page
Jurisdiction	1
Question Presented	2
Statutes Involved	3
Statement	4
The Questions Are Substantial	6
Argument under Assignments of Error	10
Conclusion	30

Table of Cases Cited

Butler v. *Thompson et al.*, 184 F. (2d) 526	6
Davis v. *Schnell*, 81 F. Supp. 872, 880	6, 8, 9
Ex parte Commonwealth of Virginia, 100 U. S. 676	6, 10
Guinn v. *United States*, 238 U. S. 347	6, 9, 22, 23
Lane v. *Wilson*, 307 U. S. 268	6, 7, 9, 22, 23
Matton Steamboat Company v. *Murphy*, 319 U. S. 412	2
Michael v. *Cockerell*, 161 F. (2d) 163	8, 9, 23
Myers v. *Anderson*, 238 U. S. 368	6, 9, 22, 23
Rice v. *Elmore*, 4th Cir., 165 F. (2d) 387, 392	6, 8, 9, 22
Smith v. *Allwright*, 321 U. S. 1031	6
Sterling v. *Constantin*, 287 U. S. 377	2
United States v. *Classic*, 313 U. S. 1031	6, 12
357	1
United States v. *Capital Transit Company*, 325 U. S.	
Company, 326 U. S. 236	2
United States v. *Detroit and Cleveland Navigation* 515	2
United States v. *Pierce Auto Freight Lines*, 327 U. S.	
Yick Wo v. *Hopkins*, 118 U. S. 347	6, 9

Constitutional and Statutory Provisions Cited

Constitution of United States, Seventh Amendment (Vol. II, O. S. 1931, p. 1611)	44
Constitution of United States, Article VI (Vol. II, O. S. 1931, p. 1608)	43

Page

Constitution of United States, Fourteenth Amendment (Vol. II, O. S., 1931, p. 1613) 17
Constitution of United States, Fifteenth Amendment (Vol. II, O. S. 1931, p. 1614) 10, 12
Act of Congress Admitting Virginia to Representation in Congress (U. S. Statutes at Large 16, p. 62,
Constitution of Virginia of 1867, Article III, Sections 41st Congress, 1869-71) 35
Constitution of Virginia of 1867, Article XII, (Code 1 & 2, (Code of Virginia, 1873, pp. 8 & 9) 34
Code of Virginia of 1873, Chapter VII (pp. 146, of Virginia 1873, p. 32) 34
Constitution of Virginia of 1902, Article II, Sections 18, 19, 21, 22, 23 (Vol. 9, Michie's Code of Virginia, 147) 37
Tax Code of Virginia, Chapter V, Section 22 (Tax Code, Vol. 8, Michie's Code of Virginia, 1950; Constitution of Virginia, Sec. 173, Vol. 9, Michie's Code 1950, pp. 448-452) 40
United States Code, Title 8, Chapter 2, Section 31 of Virginia, 1950, p. 542) 43
United States Code, Title 8, Chapter 3, Section 43 (R. S. Sec. 2004) 44
United States Code, Title 28, Section 1253 (June 25, (R. S. Sec. 1979) 44
United States Code, Title 28, Section 2101 (June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, 1948, c. 646, 62 Stat. 926) 1
c. 139, Sec. 106, 63 Stat. 104) 1
United States Code, Title 28, Section 2281 (June 25, 1948, c. 646, 62 Stat. 968) 1

OTHER REFERENCES

Cooley, Constitutional Limitations (5th Ed.), p. 756 22
Census of the United States, 1940 25
Debates of the Constitutional Convention of Virginia of 1902 22
Report of the Senate Judiciary Committee (Senate Report No. 1662, 77th Congress, 2d Sess., Vol. 88, pp. 9029-9031) 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No.

JESSIE BUTLER,

Appellant,

vs.

MARY A. THOMPSON, LEVIN NOCK DAVIS, MATT G. ANDERSON, MARIE H. EWERS, ROBERT HILLEARY, EILEEN B. GILLIGAN,

Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA

BRIEF OF APPELLANT REPLYING TO APPELLEES' STATEMENT IN OPPOSITION TO JURISDICTION, AND OPPOSING APPELLEES' MOTION TO DISMISS OR AFFIRM.

The jurisdiction of the Supreme Court to review the decision of the District Court in the above matter is conferred by Title 28, United States Code, Sections 1253, 2281, 2284 and 2101(a) and 2101(b).

The following decisions sustain the jurisdiction of the Supreme Court on appeal to that Court:

United States v. *Capital Transit Company*, 325 U. S. 357;

United States v. *Detroit and Cleveland Navigation Company*, 326 U. S. 236;
United States v. *Pierce Auto Freight Lines*, 327 U. S. 515;
Matton Steamboat Company v. *Murphy*, 319 U. S. 412;
Sterling v. *Constantin*, 287 U. S. 377.

Questions Presented

1

Whether or not the franchise laws of the 1902 Constitution of Virginia, and Acts of Assembly enacted pursuant thereto, violate the Fourteenth and Fifteenth Amendments of the Federal Constitution, and an Act of Congress passed January, 1870, admitting Virginia to representation in Congress. (A copy of said Act of Congress is attached hereto as Appendix G.)

2

Did the State of Virginia, by enacting Sections 18 to 23, inclusive, of the Virginia Constitution of 1902, and Section 22 of the Tax Code of Virginia, violate the Act of Congress passed January 26, 1870, under which the state was readmitted to representation in the Congress of the United States, conditioned on its good faith in carrying out the conditions set forth therein? (A copy of said Virginia franchise laws, including said Sections 18 to 23, inclusive, are attached hereto as Appendix I.)

3

Will this Court uphold as constitutional a poll tax law requiring three years cumulative payment of the tax six months before an election as a prerequisite to the right to vote for Members of Congress and other Federal officers where the express purpose of such legislation is to dis-

franchise citizens because of race, color and previous condition of servitude?

4

Can a poll tax law which appears on its face to apply to all classes alike, but the true purpose of which (as is shown by the evidence in the record) is to deny the right guaranteed by the Fourteenth and Fifteenth Amendments of the Federal Constitution to Negro citizens, and the object of which poll tax law is to circumvent and violate the supreme law of the land, be upheld by the courts under the guise of a revenue statute? (Appendix J, Section 22, Chapter 5, of the Tax Code of Virginia.)

5

Will the Acts concerning registration, of the present 1902 Constitution of Virginia, Sections 18, 19, 20, 21, 22, and 23, and the Acts of the General Assembly of Virginia enacted pursuant thereto (see Appendix I), be upheld by this Court when it appears on their face that these laws do not apply to all persons and classes alike, but that they are unfair, and that their purpose is to deny registration to citizens because of race, color and previous condition of servitude?

Statutes Involved

Title 28, United States Code, Section 1253. (June 25, 1948, c. 646, 62 Stat. 926).

Title 28, United States Code, Section 2281. (June 25, 1948, c. 646, 62 Stat. 968).

Title 28, United States Code, Section 2101. (June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, Sec. 106, 63 St. 104).

Fourteenth Amendment to Constitution of United States (Vol. II, O.S. 1931, p. 1613).

Fifteenth Amendment to Constitution of United States (Vol. II, O.S. 1931, p. 1614).

Constitution of Virginia of 1867, Article III, Sections 1 and 2 (Code of Virginia, 1873, pp. 8 & 9).

Constitution of Virginia of 1867, Article XII (Code of Virginia, 1873, p. 32).

Act of Congress admitting Virginia to representation in Congress (U.S. Statutes at Large 16, p. 62, 41st Congress, 1869-71).

Code of Virginia of 1873, Chapter VII (pp. 146, 147).

Constitution of Virginia of 1902, Article II, Sections 18, 19, 20, 21, 22, 23, (Vol. 9, Michie's Code of Virginia, 1950, pp. 448-452).

Tax Code of Virginia, Chapter V, Section 22 (Tax Code, Vol. 8, Michie's Code of Virginia, 1950, pp. 349-350; Constitution of Virginia, Sec. 173, Vol. 9, Michie's Code of Virginia, 1950, p. 542.)

Article VI, United States Constitution (Vol. II, O.S. 1931, p. 1608).

Seventh Amendment, United States Constitution (Vol. II, O.S. 1931, p. 1611).

United States Code, Title 8, Chapter 2, Section 31 (R. S., Sec. 2004).

United States Code, Title 8, Chapter 3, Section 43 (R.S., Sec. 1979).

Statement

The appellant, Jessie Butler, a colored woman, who was a resident and citizen of Arlington County, and of the State of Virginia, at the time this cause arose, and is now a resident and citizen of the said County and State, did, on the 15th day of December, 1949, present herself at the office of Mary A. Thompson, the duly qualified central registrar for the County of Arlington, and asked that she be registered so that she could cast a ballot in the precinct in which she lives in Arlington County, Virginia, in the general election of November, 1950, and in future elections for Members of

Congress and other State and Federal officials. The appellant presented proof of her qualifications to register and vote, in accordance with the Constitution of Virginia of 1867, and the Acts of the General Assembly of 1869-1870, and the Act of Congress of 1870. (See Appendices E and G.)

The said defendant, Mary A. Thompson, refused to register the appellant because she had not paid a poll tax, and the appellant then brought this suit in the United States District Court for the Eastern District of Virginia, asking the said Court to direct the defendant, Mary A. Thompson, to register her in accordance with the Constitution of Virginia of 1867, and statutes made pursuant thereto, and the laws of the United States.

The appellant in her complaint also asks the said Court to compel the election officials, the other defendants in this cause, to permit the appellant to vote in the 1950 general election for Members of Congress and other Federal and State officers, and in future elections, and for a declaratory judgment voiding the franchise laws of the 1902 Constitutional Convention as repugnant to the Fourteenth and Fifteenth Amendments.

The appellant also asks that the Court award her damages in the amount of $5,000.00, against the defendant Mary A. Thompson, because of the illegal and wilful denial on the part of the said defendant to register the appellant so that she could vote.

The appellant, in her complaint, further charged that the election laws and franchise laws of the Constitution of Virginia of 1902 are in violation of the Constitution of Virginia of 1867, and the Act of Congress of 1870 admitting Virginia to representation in Congress, and were passed for the avowed purpose of prohibiting Negroes from voting. The appellant also charged that the franchise laws of Virginia violate the Fourteenth and Fifteenth Amendments of

the Federal Constitution because their purpose was to discriminate against Negroes on account of race and color and previous condition of servitude, and submitted uncontroverted evidence at the trial to support the allegation.

The appellant further alleged in her complaint, and set up in the said complaint, statistics to show that the present franchise laws of Virginia do, in fact, operate to prohibit Negroes from voting; and the appellant further charged that the present franchise laws of Virginia constitute a conspiracy on the part of election officials and others who administer them to prohibit her and other Negroes from voting, in violation of her constitutional rights. At the trial she produced uncontrovertible evidence which clearly showed that the purpose of the present Virginia franchise laws was to prohibit Negroes from voting, in violation of the Fourteenth and Fifteenth Amendments, and that the administration of these laws actually accomplished this purpose.

The Questions Are Substantial

The issues involved in this appeal are the same as those in the case of *Ex parte Commonwealth of Virginia*, 100 U.S. 676; *Yick Wo* v. *Hopkins*, 118 U.S. 227; *Guinn* v. *United States*, 238 U.S. 347; *Myers* v. *Anderson*, 238 U.S. 368; *Lane* v. *Wilson*, 307 U.S. 268; *United States* v. *Classic*, 313 U.S. 1031; *Smith* v. *Allwright*, 321 U.S. 1031; *Rice* v. *Elmore*, 4th Cir. 165 F. 2d 387, 392; *Davis* v. *Schnell*, 81 F. Supp. 872, 880.

The appellant, Jessie Butler, filed her bill of complaint against the defendants on January 6, 1950, in the District Court in Alexandria. She requested a three-judge court, in accordance with Sections 2281 and 2284, U.S. Code, Title 28 on the ground that her complaint presented substantial constitutional questions.

The trial judge of the United States District Court for the Eastern Division of Viriginia dismissed the complaint on the ground that such questions as were set forth in the bill of complaint did not present substantial constitutional questions, and therefore a three-judge court, in accordance with Sections 2281 and 2284, was not justified.

Whereupon, the appellant prosecuted an appeal to the United States Circuit Court of Appeals, Fourth Circuit. The record and briefs were printed and filed with said appellate court, and the matter was argued on October 13, 1950. The case was decided October 16, 1950.

The United States Circuit Court of Appeals in remanding the case said: "There was error in refusing to take appropriate action for convening a statutory court of three judges to hear the case, as substantial constitutional questions were unquestionably involved. We do not here attempt to pass upon these questions, as they are matters for the judgment of the three-judge District Court, with review thereof, if any, by the Supreme Court of the United States. The judgment dismissing the action will be reversed, and the case will be remanded to the District Court, with direction that a court of three judges be constituted, as required by statute, to pass upon the questions involved." *Butler* v. *Thompson et al.*, 184 F (2d) 526.

The appellant contends that the evidence in the transcript of the record will show conclusively that the purpose of the Virginia franchise laws was to prevent Negroes from voting, in violation of the Act of Congress, (the Fourteenth and Fifteenth Amendments of the Constitution of the United States), and comes clearly within the principle of law laid down in *Lane* v. *Wilson,* 307 U.S. 268, wherein the Court said:

> "We therefore cannot avoid passing on the merits of the plaintiff's constitutional claims. The reach of

the Fifteenth Amendment against contrivances by a State to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions. The amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race."

This principle is followed in *Davis* v. *Schnell*, 81 F. Supp. 872, 880, by a three-judge court holding unconstitutional the Boswell amendment to the constitution of Alabama prescribing an educational qualification for suffrage designed to disfranchise Negro voters. Said the Court:

"It, thus, clearly appears that this Amendment was intended to be, and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color. Therefore, we are necessarily brought to the conclusion that this Amendment to the Constitution of Alabama, both in its object and the manner of its administration, is unconstitutional, because it violates the Fifteenth Amendment. While it is true that there is no mention of race or color in the Boswell Amendment, this does not save it. The Fifteenth Amendment 'nullifies sophisticated as well as simple-minded modes of discrimination' and 'It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.'"

The same principle is followed in *Rice* v. *Elmore*, 4 Circuit 165 F. 2d 387, 392. Said the Court:

"These amendments have had the effect of creating a federal basis of citizenship and of protecting the rights of individuals and minorities from many abuses of governmental power which were not contemplated

at the time. Their primary purpose must not be lost sight of, however; and no election machinery can be upheld if its purpose or effect is to deny to the Negro on account of his race or color any effective voice in the government of his country or the state or community wherein he lives."

The appellant further states that the franchise laws are not fair upon their face (Appendix I), and come clearly within the principle of *Guinn* v. *United States*, 238 U.S. 347; and *Myers* v. *Anderson*, 338 U.S. 368.

And the appellant also states that the evidence by the transcript of the record will clearly show that the franchise laws are administered with an evil eye and unequal hand, and come within the principle of *Yick Wo* v. *Hopkins*, 118 U.S. 336; *Lane* v. *Wilson*, 307 U.S. 268; *Rice* v. *Elmore*, 4th Cir. 165 F. 2d 387, 392; *Davis* v. *Schnell*, 81 F. Supp. 872, 880.

Moreover, the opinion of the instant three-judge District Court from which this appeal is prosecuted, is in conflict with principles of law stated in the case of *Michael* v. *Cockrell*, 161 F. 2d 163, and *Butler* v. *Thompson*, 4th Cir. 184 Fed. (2d) 328.

Again, too, the opinion of the three-judge District Court is in conflict with the opinion of *Guinn* v. *United States*, 238 U.S. 347; *Myers* v. *Anderson*, 238 U.S. 368; *Lane* v. *Wilson*, 307 U.S. 268; *Rice* v. *Elmore*, 4 Cir. 165 F. (2d) 387; *Davis* v. *Schnell* (a three-judge court from Alabama), 81 F. Supp. 872, supra.

Further, the District Court erred in not following the evidence in accordance with the law laid down in *Michael* v. *Cockrell*, 4 Cir. 161 F. (2d) 163; *Butler* v. *Thompson*, 4 Cir. 184 Fed. (2d) 328.

Argument under Assignments of Error

On appeal to this Court in the Statement the appellant assigned five errors, which are as follows:

Argument Under Assignment of Error No. 1.

1. In connection with Assignment of Error No. 1, in which the plaintiff asserts that the District Court erred in not holding that the Act of Congress of 1870 (Appendix G) was binding upon Virginia in preventing said State from imposing a poll tax of $1.50 a year for three consecutive years, payable six months in advance of the general election, as a prerequisite to voting, the plaintiff contends that the said Act of Congress was passed and imposed under authority of the Fifteenth Amendment to the Federal Constitution, Section 2, "The Congress shall have power to enforce this Article by appropriate legislation."

Section 1 of the Fifteenth Amendment says,

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude."

This Act of Congress was passed to prohibit Virginia from amending the Constitution of 1867, which was ratified by the people of Virginia and approved by Congress, in which the right of franchise did not impose a poll tax as a prerequisite of voting. (Constitution of Virginia, 1867, Article 3, Sections 1 and 2).

The authority for passing this Act of Congress under the Fifteenth Amendment is in line with *Ex parte Commonwealth of Virginia*, 100 U. S. 676, in which the Court said:

> "The prohibitions of the Fourteenth Amendment are directed to the States and they are to a degree a restriction of State power. It is this which Congress

is empowered to enforce, and to enforce against State action, however put forth, whether such action be executive, legislative or judicial. Such enforcement is no invasion of state sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact."

2. Section 4, of Article I, of the Federal Constitution, reads as follows:

"The Times, Places and Manner of holding Elections for Senator and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such Regulations, except as to the places of choosing Senators."

In the *Yarbrough* case, reported in 110 U.S. 651, the Supreme Court said:

"The right to vote for members of Congress is fundamentally based upon the Constitution of the United States, and was not intended to be left within the exclusive control of the State."

Supreme Court Justice Miller in that case said:

"But it is not correct to say that the right to vote for a Member of Congress does not depend upon the Constitution of the United States."

Section 31, United States Code, Title 8, Chapter 2, provides:

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any state or terri-

tory, or by or under its authority, to the contrary notwithstanding." (R.S. Section 2004).

In that connection, in the case of *United States* v. *Classic*, 313 U.S. 1031, Mr. Justice Stone said:

> "The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution.
>
> "While in a loose sense, the right to vote for a Representative in Congress is sometimes spoken of as a right derived from the State * * * this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject, as provided by Section 2 of Article I, to the extent that Congress has not restricted State action by the Section 4, and its more general power under Article I, exercise of its power to regulate elections under Section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers' ".

Therefore, it seems obvious that under the Fifteenth Amendment, supra, Congress did have constitutional authority to pass the act admitting Virginia to representation in Congress, based upon the proposition

> "That the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the Constitution herein recognized * * * Provided, that any alteration of said Constitution, prospective in its effects, may be made in regard to the time and place of residence of voters."

If, under the *Yarbrough* case (supra), and the *Classic* case (supra), Congress, by general law can exercise its legislative function to prescribe the qualifications of voters

and regulate elections for Members of Congress, why then, under *Ex parte Commonwealth of Virginia* (supra) could not Congress enforce the Fifteenth Amendment, as it did by the Act of Congress passed January, 1870 (supra), as applied to Virginia?

Article VI of the Constitution says,

> "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding * * *."

In effect by the opinion of the District Court and the judgment rendered by said court, that court has declared the Act of Congress of January, 1870, relating to Virginia unconstitutional.

Argument under Assignment of Error No. 2

Under Assignment of Error No. 2, the appellant asserts that the franchise laws of Virginia, as adopted by the 1902 Constitutional Convention, were passed for the avowed purpose of preventing Negroes from voting, and that the said laws plainly violate the Fourteenth and Fifteenth Amendments of the Federal Constitution. To prove that was the purpose of the Virginia Constitutional Convention of 1902 which enacted these franchise laws, plaintiff offered as evidence the official Debates of the Virginia Constitutional Convention of 1901 and 1902. These Debates were received as evidence by the District Court and they formed an important part of the Report of the Senate Judiciary Committee of the 77th Congress, relating to the poll tax; Senate Report No. 1662, 77th Cong., 2d Sess. Cong. Rec. 77th Cong. 2d Sess., Vol. 88, pp. 9029-9031; and that report

was referred to in the opinion of *Jessie Butler* v. *Mary A. Thompson et al.*, supra, argued October 13, 1950, and decided October 16, 1950, in which the United States Circuit Court of Appeals reversed the District Court and a three-judge court was constituted. This report of the Senate Judiciary Committee, set forth in part, is as follows:

> "We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that these State constitutions from which emanated mainly the poll tax laws were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way, but in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter, and hence they devised the poll tax method, which applied to white and colored alike. In other words, the poll tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.
>
> "We desire to call attention to the Virginia constitutional convention which submitted an amendment, which was afterward adopted, to the Constitution of Virginia, by which it was intended to disfranchise a very large number of Virginia citizens. We think this convention can be regarded as a fair example of other conventions in other poll tax States. Hon. Carter Glass was a member of that convention. Near the beginning of the convention Senator Glass made a speech in which he outlined in very forceful language what the object was, after all, of the convention. He did this in his usual commendatory method of getting at the real cream in the cocoanut. Near the beginning of the convention he made a speech in which he said:
>
> 'The chief purpose of this convention is to amend the suffrage clause of the existing constitution. It does not require much prescience to foretell that the

> alterations which we shall make will not apply to "all persons and classes without distinction." We were sent here to make distinctions. We will make distinctions.'

"Near the conclusion of the convention, Senator Glass delivered another address, in which he referred to the work already performed by the convention. He said:

> 'I declared then (referring to the beginning of the convention and debate on the oath) that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant voters (great applause) whose capacity for self-government we have been challenging for 30 years past.'

"There is no doubt but what Senator Glass stated the real object the convention had in view. The fact that his remarks were received with great applause indicates that his fellow members of that convention agreed with him and that the real object they had in view, and which they believed they could accomplish, was disfranching '146,000 ignorant Negro voters.'

"Under the circumstances, can there be any doubt when perhaps the greatest leader of all stated what the object was and what was expected to be accomplished by the so-called poll tax laws? If we concede that this was the object of the law, then we admit it is unconstitutional because, if this was the effect of the law, it in fact made an artificial qualification which, in itself, is illegal and unconstitutional, in order to come in under the qualification clause of section 2, article I, of the Constitution.

"It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the Act

of Congress of Jan. 26, 1870 (16 Stat. p. 62) (Appendix G). The provision which refers to Virginia reads as follows:

> 'The Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws equally applicable to all the inhabitants of said State: PROVIDED, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters.'

"It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and absolutely unconstitutional.

"It seems perfectly plain that the object of this poll tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting, and that, therefore, under Section 2, of Article I, of the Constitution, it seems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called 'qualifications' clause in Section 2, of Article I, of the Constitution. It is likewise equally plain that at the end of the War between the States, when these States were readmitted under a statute of Congress which provided explicitly that the constitutions of the States 'shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote.'

"In Section 4, Article IV of the Constitution of the United States it is provided:

> 'The United States shall guarantee to every State in this Union a republican form of government.'

"What does this mean in the light of the present day civilization? Can we have a republican form of government in any State if, within that State, a large portion and perhaps a majority of the citizens residing therein are denied the right to participate in governmental affairs because they are poor? We submit that this would be the result if under Section 2, Article I, of the Constitution, the proposed law is held to be unconstitutional. T e most sacred right in our republican form of government is the right to vote. It is fundamental that that right should not be denied unless there are valid constitutional reasons therefor. It must be exercised by free men. If it is not, then we do not have a republican form of government. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

"Section 1, of the Fourteenth Amendment to the Constitution of the United States reads as follows:

> 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

"It is quite clear that the so-called poll tax laws do abridge the privileges and immunities of the citizens of the United States. If citizens of the United States are required to pay a poll tax it is clearly an abridgement of their privileges and immunities.

"It is said that Section 2 provides an exclusive remedy for a violation of Section 1 of the Fourteenth Amendment to the Constitution. Section 2 refers to the apportionment among the several States of representatives in Congress and provides for the reduction

> in the number of such representatives whenever the right to vote is denied. We do not think this remedy is an exclusive one. Section 1, of the Fourteenth Amendment to the Constitution is positive in its terms and says that no State shall make or enforce any law which is an abridgement of the privileges and immunities of citizens of the United States." (Senate Judiciary Report, supra).

Again, in connection with the purpose of the above Constitutional Convention of Virginia to rid the State of Negro voters, the Court's attention is directed to the following remarks of Delegate Carter Glass: (Debates, p. 292).

> "Now, then, to the facts of the case: In response to the demand of the white people of Virginia, a Democratic Legislature proposed to the people the calling of a Constitutional Convention to revise and amend the present constitution. The primary purpose of that convention was to abridge the right of popular suffrage and to eliminate every negro of whom we could be rid without running counter to the prohibition of the Federal Constitution. Not a white man in Virginia, nor a black man of ordinary intelligence, will contend that this purpose of constitutional revision was disguised or attempted to be concealed."

And Delegate Barbour, from Culpeper, said the following: (Debates, p. 181)

> "Mr. Chairman, we all know that the great purpose of calling this convention was to restrict the suffrage and to restrict it in a certain direction. Shall we, after having spent several months here in earnest discussion of this instrument, go back and submit the constitution which we shall adopt to the very electorate which the people have already declared incapable of properly exercising the powers of government? Is

there any reason why we should do it? Would there be any justification for such a course?

"I not only think it would not be wise, but I think it would be the height of folly and it would be a stultification of the work of the people to come here and prepare a constitution and then say it must be first approved by a class of citizens whom we all declare are incapable and who have already, by the sovereign voice of the people of Virginia, been declared incapable of exercising and incompetent to exercise the rights of citizenship."

Nothing could be clearer to show the unlawful purpose of the Virginia Constitutional Convention than the following statement by Delegate Thom: (Debates, p. 2973)

"We come here to sweep the field of expedients for the purpose of finding some constitutional method of ridding ourselves of it forever; and we have the approval of the Supreme Court of the United States in making that effort. When, in the Williams case, going up from Mississippi, the point was made against the constitutionality of the Mississippi suffrage law, that the Supreme Court of that State had said, as to the purpose of the framers of the suffrage plan, that 'within the field of permissible action, under the limitations imposed by the Federal Constitution, the Convention swept the field of expedients to obstruct the exercise of suffrage by the Negro race, what did the United States Supreme Court reply? It was this:

'If weakness were to be taken advantage of, it was to be done within the field of permissible action under the limitations imposed by the Federal Constitution.'

"So, in that high tribunal, it was said that, within the limits of the Federal Constitution it is permissible for this people to search for expedients to exclude the negro race. If then, a rigid examination permitted by the Constitution excluded the negro; then, in law, he is excluded by virtue of his failure to attain a certain

standard, and not for the reason he is a negro; and therefore, the law itself is constitutional. But, again, I expect this clause to be efficient, because it will act 'in terrorem' upon the negro race. They believe that they will have a hostile examination put upon them by the white man, and they believe that that will be a preventive to their exercising the right of suffrage, and they will not apply for registration. They will know that they first have to pass an examination; that they will then have to make out their application for registration in their own handwriting; that then they have to make out their ballot without assistance, and that then they have to pay a capitation tax. These impediments will be too great for the negro, and he will find himself, as a practical question, excluded from the suffrage."

However, the Virginia Convention was not satisfied with the poll tax itself to keep the Negroes from voting, but it also resorted to the registration clause.

Here is what one delegate said concerning how it would work as a practical way to prohibit Negroes from voting: (Debates, p. 2972 and p. 2974).

"But it would not be frank in me, Mr. Chairman, if I did not say that I do not expect an understanding clause to be administered with any degree of friendship by the white man to the suffrage of the black man. I expect the examination with which the black man will be confronted to be inspired by the same spirit that inspires every man upon this floor and in this convention. I would not expect an impartial administration of the clause.

"This is what is the meaning in the minority plan of this understanding clause—it means that the whole white voting population of the State of Virginia is to walk into this suffrage; either through the educational test or through the understanding clause; and my friends expect to go back to their constituents and to

justify their action towards the white illiterate voters of their counties and cities by the fact that they have provided this gateway to the suffrage for them through the understanding clause. They have demanded that the understanding clause of this Convention and of this committee, for the purpose of protecting their white men. We concede it to them. We say we are hand in hand with you in the purpose of bringing your white men to the polls, but at the same time, we say forget not, gentlemen, the problem that is upon us, and concede the same thing to us for the purpose of excluding our black man from the polls.

"The administration of the new law will thus be, during all that time, exactly what you want it to be. What does it amount to to leave the understanding clause in the Constitution after that time?

"The first is to throw some additional obstacle in the way of the negro who shall attempt to vote. But the second and most important is that, in the event this understanding clause were to be administered by a party hostile to white domination and partial to negro suffrage, there would still remain between the negro and the ballot box every impediment which is offered at first by the minority plan—to-wit, the requirement that the voter shall make out his application for registration in his own handwriting, and shall make out and deposit his ballot without assistance."

The unlawful purpose of the Convention was so patently plain that Delegate Judge Thomas W. Harrison was forced to warn the Convention. His warning, however, fell upon deaf ears. But here is what he had to say upon the subject: (Debates, p. 158).

"Mr. Chairman, I think it is absolutely demonstrable that, as a matter of law, this body is compelled to submit its work to the people at present constituting the electorate. If you do not do it you are going to invite litigation which will in all probability overturn in some

> Federal court the work that we do here. Of course, I do not think the State courts will have any possible jurisdiction in the matter, but I believe that the Federal courts will have jurisdiction and will have power under the authority and under the law that I have undertaken to cite here, to overturn the work of this Convention."

The Debates of the 1902 Constitutional Convention of Virginia, from which the above quotations were taken, form some of the plaintiff's evidence, and were received by the district court in accordance with stipulation of counsel for plaintiff and defendants (Transcript of the evidence).

Counsel for appellant submit that the purpose for the Constitutional Convention, as shown by the debates and evidence, was to violate the Federal Constitution and the Act of Congress, and that said purpose comes within the rule laid down in *Guinn* v. *United States*, 238 U. S. 347; *Lane* v. *Wilson*, 307 U. S. 268; *Myers* v. *Anderson*, 238 U. S. 368; *Rice* v. *Elmore*, 165 F. 2d 387; and *Davis* v. *Schnell*, 81 F. Supp. 872, 880.

Judge Cooley said, in that connection:

> "All regulations of the elective franchise, however, must be reasonable, uniform and impartial. They must not have for their purpose directly or indirectly to deny or abridge that constitutional right of the citizen to vote, or unnecessarily to impede its exercise. If they do they must be declared void." (Cooley, Const. Lim. (5th Ed.) 758.)

Argument under Assignment of Error No. 3

In connection with Assignment of Error No. 3, failure and refusal of the Court to find and hold that the franchise laws of Virginia as adopted by the 1902 Constitutional Convention and the Acts of Assembly made pursuant thereto, are not fair upon their face and do not apply to all classes alike,

and therefore violate the Fourteenth and Fifteenth Amendments of the Federal Constitution, under Article II, of the 1902 Constitution of Virginia (App. I) appellant asserts that these sections show on their face class distinction in that a person who was registered prior to 1902 shall have the right to vote without any further registration, and that the wife or widow of a Confederate soldier did not have to pay any poll tax, and that any Confederate soldier did not have to pay a poll tax. Also, the construction of the so-called grandfather clause was discussed and interpreted in *Guinn* v. *United States*, 238 U. S. 347, and *Myers* v. *Anderson*, 238 U. S. 368; and in *Lane* v. *Wilson*, 307 U. S. 268, and is pertinent to the appellant's case. *Lane* v. *Wilson*, the appellant believes, is on all fours with the Virginia registration requirements of the 1902 Constitution of Virginia (App. I).

Argument under Assignment of Error No. 4

In connection with Assignment of Error No. 4, in which the plaintiff alleges that the Virginia franchise laws are discriminatory and are administered with an evil eye and unequal hand, to prevent Negroes from voting, and thereby violate the Fourteenth and Fifteenth Amendments of the Federal Constitution, the Court's attention is specifically called to the opinion of *Butler* v. *Thompson*, *supra*, decided by the United States Circuit Court of Appeals, 4th Circuit, October 16, 1950 in which the Court said:

> "The complaint in this case repeats allegations contained in the complaint in *Michael* v. *Cockerell* (161 F. 2d 163) which was before us three years ago. Although the appeal in that case was dismissed as moot, we pointed out that the complaint raised questions of the gravest character, which, if the case were properly be-

fore us, would merit our most careful consideration. We said:

> 'The complaint and offers of proof raise questions of the gravest character, which, if presented in a case properly before us, would merit our most careful consideration. It is alleged that the provisions of the Constitution of Virginia with respect to the payment of poll tax as a prerequisite of voting were deliberately adopted for the purpose of disfranchising Negro citizens, that the debates and records of the constitutional convention so show, and that the provisions are at present administered for that purpose and with that effect. It is further alleged that thousands of citizens, white as well as colored, are denied the right to vote because of the way in which these provisions are administered, and that the right to vote is limited to such an extent that the republican form of government guaranteed by the Constitution of the United States is denied and the privileges and immunities of citizens of the United States are substantially abridged. There is allegation that as many as fifty thousand persons otherwise qualified are kept from voting in the congressional district in question as the result of the poll tax requirement, and that in the state at large it has resulted in less than 22% of those otherwise qualified participating in elections. We are not impressed by the argument that such grave violations of the constitutional right of citizens as those here alleged present merely political questions with which the courts are powerless to deal. In a case properly before us, it would be our duty to inquire whether upon the allegations and proofs rights of citizens guaranteed by the Constitution were being denied them, and if so, to grant appropriate relief.' "

The complaint which brought about the above comment by the Circuit Court of Appeals, 4th Circuit, in *Butler* v.

Thompson, supra, alleged that notwithstanding the Virginia Tax Code, Section 5, Chapter 25 (Appendix J), only a small part of the 364,114 Negroes 21 years of age or over in the State, according to the 1940 Census, were assessed in accordance with the aforesaid statute; and that of the 1,552,570 persons 21 years of age and over in Virginia, only 1,161,097 were assessed for a poll tax, leaving 391,473 persons not assessed for said poll tax; and that these persons not assessed consist mostly of Negroes (See Designation of Record, Tables Stipulated).

The plaintiff-appellant also set out in said complaint a table showing the number of Negroes 21 years of age and over, the total white and colored population and the number actually assessed, according to the 1940 United States Census, in the counties and cities comprising the Eighth Congressional District of Virginia, as follows:

County	Negroes 21 Yrs. of Age and Over	Total Population	Number Actually Assessed
Albemarle	3,313	13,780	10,994
Arlington	2,139	39,693	31,427
Culpeper	3,034	7,800	4,008
Fairfax	4,427	25,891	18,168
Fauquier	3,185	12,066	7,913
Fluvanna	1,336	4,003	2,827
Goochland	2,270	4,804	4,723
Greene	439	2,737	2,930
King George	507	3,161	2,273
Loudoun	2,188	11,920	10,718
Louisa	2,772	7,610	6,108
Madison	1,145	4,831	3,569
Orange	1,830	7,301	3,418
Prince William	1,445	10,708	4,518
Stafford	730	5,565	4,980
Alexandria (City)	3,446	22,512	18,543
Charlottesville (City)	2,649	13,001	11,124
	37,254	197,393	148,241

Appellant claimed that this table reflected that of the 197,393 residents of the Eighth Congressional District 21 years of age and over, only 148,241 were actually assessed, leaving 49,151 persons, white and colored, 21 years of age

and over, not assessed; and the appellant also charged that 35,000 of these were Negro citizens, who were disfranchised in violation of the Constitution of the United States and the laws of Virginia.

The plaintiff-appellant also charged that as a result of the aforesaid discriminatory franchise laws in the State of Virginia, which had for their purpose the deprivation of the Negro of his right to vote for Members of Congress because of his race, color and previous condition of servitude, this purpose was accomplished, as shown by the material drop in the number of voters in the State of Virginia, as shown in the following table of percentages which was set up in the said complaint:

Chart Showing Percentage of Voters in Presidential Elections, Based on Male Population Prior to 1920, and on Adult Population Beginning with 1920

Year	State of Virginia Per Cent
1872	57.74
1876	67.32
1880	56.42
1884	72.61
1888	74.75
1892	68.96
1896	66.45
1900	57.00
1904	28.05
1908	27.10
1912	25.81
1916	27.87
1920	16.67
1924	21.21
1932	20.08
1936	21.65
1940	21.58

Appellant asserts that the uncontroverted evidence submitted to the three-judge district court proved her allegations, which the United States Circuit Court of Appeals for the 4th Circuit, in *Butler* v. *Thompson, supra,* called grave violations of constitutional rights.

To these allegations of the plaintiff-appellant, the Attorney General, representing the Commonwealth of Virginia and defendants, filed an answer and set up a table which he

claimed to be accurate. The table, which is part of his answer, is set forth below:

	Total Over 21	Total Assessed	Negroes Over 21	Negroes Assessed	Whites Over 21	Whites Assessed
Albemarle	13,728	10,959	3,034	2,144	10,694	8,815
Arlington	39,693	31,125	3,313	1,863	36,380	29,262
Culpeper	7,800	4,007	2,139	664	5,661	3,343
Fairfax	25,891	18,114	4,427	1,835	21,464	16,279
Fauquier	12,066	7,913	3,185	1,496	8,881	6,417
Fluvana	4,003	2,822	1,336	813	2,667	2,009
Goochland	4,804	4,722	2,270	2,244	2,534	2,478
Greene	2,737	2,930	439	492	2,298	2,438
King George	3,161	2,273	907	679	2,254	1,594
Loudoun	11,929	10,698	2,188	1,722	9,741	8,976
Louisa	7,610	6,108	2,772	1,974	4,838	1,134
Madison	4,831	3,569	1,145	727	3,686	2,842
Orange	7,301	3,418	1,830	506	5,471	2,912
Prince William	10,708	4,516	1,445	535	9,263	3,981
Stafford	5,565	4,980	730	633	4,835	4,347
Alexandria	22,512	18,542	3,446	1,987	19,066	16,555
Charlottesville	13,001	10,930	2,648	2,506	10,353	8,424
	197,340	147,626	37,254	22,820	160,086	124,806

The plaintiff-appellant accepted the above table of the Attorney General as being accurate, rather than her own; and this table, filed on behalf of the Commonwealth of Virginia, shows that there were 197,340 persons, white and colored, 21 years of age and over, in the Eighth Congressional District, and of this number 146,625 were assessed with a poll tax, leaving 49,714 persons, white and colored, 21 years of age and over, not assessed, or a total of over 25% of the total population unassessed, as required by Section 5, Chapter 25, of the Tax Code of Virginia.

The table showed a total of 37,254 negroes 21 years of age and over who should have been assessed. Of this number only 22,820 were assessed, leaving 14,974 unassessed, or over 40 per cent who were not assessed for a poll tax.

Now, in connection with the assessment of the whites, it shows a total of 160,086 whites 21 years of age and over who should have been assessed, and 124,806 whites who were assessed, or 35,280 whites 21 years of age and over not assessed, or a percentage of 22% unassessed whites, as against 40% negroes not assessed.

The plaintiff-appellant submits that these figures and totals, which were accepted as conclusive evidence, support completely the allegations of the plaintiff-appellant which the United States Circuit Court of Appeals, Fourth Circuit, *Butler* v. *Thompson, supra,* said were grave constitutional violations of the rights of the citizens of Virginia.

Judge Dobie, writing the opinion for the three-judge District Court, said that the plaintiff failed utterly to show any discrimination against negroes in the administration of Virginia poll tax laws, and dismissed, apparently as unimportant, the discriminations and lack of assessments which the United States Circuit Court of Appeals, in *Butler* v. *Thompson, supra,* said were grave violations of constitutional rights.

Judge Dobie, in said opinion, also laid great stress on the testimony of Deputy Sheriff Trice, in which, Judge Dobie said, the witness had testified that he did not know of any discrimination in administering the poll tax laws, and he knew of no instance in which said discrimination was used.

In drawng this conclusion, Judge Dobie completely disregards the later testimony of Deputy Sheriff Trice, on re-direct examination, that he knew nothing about the operation of the Treasurer's Office of Arlington County, or of the office of the Commissioner of the Revenue. This testimony completely destroyed the value of his original statement that he knew of no discrimination, upon which Judge Dobie laid such stress.

In connection with the testimony of Deputy Sheriff Trice and Sheriff Clements, these two witnesses were put upon the stand to testify on direct examination that during their tenure of office, at no time had the State Department of Taxation ever sent a levy, or tax suit, or any other legal paper in an attempt to collect said poll taxes. The Attorney General, representing the defendant Commonwealth of

Virginia, asked Deputy Sheriff Trice if he knew of any discrimination. Counsel for the plaintiff-appellant objected to this question on the ground that it was outside the scope of testimony on direct examination. The Court held that had there been a jury the objection would have been sustained, but as the matter was being tried without a jury, the Court allowed the question of the Attorney General and the answer of the witness (Transcript of Evidence).

Relating to the testimony of Deputy Treasurer Shepherd, this witness was introduced by the plaintiff-appellant to show the number of capitation taxes actually assessed in Arlington County, the number paid and the amount of money paid; and the evidence showed that many, many thousands of dollars of poll tax assessments were not paid, and that no attempt had been made by the taxing authorities to collect these poll taxes. The purpose of this testimony was to show that the poll tax was not a revenue tax, as is claimed, but a restrictive tax, in keeping with the purpose of the Constitutional Convention of 1901 and 1902, to throw all possible impediments in the way, to rid the State of Negro voters, in violation of their constitutional rights (Transcript of Evidence).

It is submitted that the decision of the District Court is contrary to the law as laid down by this Court, and is contrary to the evidence adduced in the trial, and is contrary to the decision of the United States Circuit Court of Appeals in the case of *Butler* v. *Thompson, supra*, which remanded this case to be heard by the instant three-judge District Court.

In the case of *Michael* v. *Cockerell*, 161 F. (2d) 163, the allegations were practically the same as those in the case of *Butler* v. *Thompson*, the instant case, reported in 184 F. (2d) 526. In the first case Judge Hutcheson dismissed the complaint on the authority of *Breedlove* v. *Suttles*, 302 U. S. 277, which is relied upon by the Appelles. Three years

later Judge Bryan dismissed the instant case, *Butler* v. *Thompson*, upon the same authority. The Circuit Court of Appeals for the 4th Circuit, in remanding the instant case to a three-judge court, from which this appeal is prosecuted, said court being composed of Judge Dobie of the 4th Circuit Court of Appeals, and Judges Hutcheson and Bryan, commented upon *Breedlove* v. *Suttles*, *supra*.

Counsel for Appellees laid great stress upon the fact that the franchise laws of the 1902 Constitution of Virginia were amended and changed by vote of the people in 1928, and that therefore the 1902 Constitution has no bearing. The fact of the matter is that the 1928 amendments to the Virginia Constitution of 1902 were brought about under the franchise laws of the 1902 Constitution, which formulated the restricted ballot and had for their purpose the elimination of the Negro from the ballot boxes.

We believe that the questions presented by this appeal are substantial constitutional questions, as so stated by the United States Circuit Court of Appeals, in *Butler* v. *Thompson*, *supra*, and by the report of the United States Judiciary Committee, supra, and that they are questions of great public interest to 1,552,000 citizens 21 years of age and over in the Commonwealth of Virginia, and therefore the appellees' motion opposing jurisdiction and motion to dismiss or affirm should be denied.

Respectfully submitted,

John Locke Green,
Frank L. Ball,
Counsel for Appellant.

APPENDIX B

TITLE 28, UNITED STATES CODE

SECTION 1253. *Direct appeals from decisions of three-judge courts.*

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

June 25, 1948, c. 646, 62 Stat. 926.

SECTION 2281. *Injunction against enforcement of State statute; three judge Court required.*

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under Section 2284 of this title.

June 25, 1948, c. 646, 62 Stat. 968.

SECTION 2101. *Supreme Court; time for appeal or certiorari; docketing; stay.*

(a) A direct appeal to the Supreme Court from any decision under Sections 1252, 1253, and 2282 of this title, holding unconstitutional in whole or in part any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days from the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action, suit or proceeding, shall be taken within

thirty days from the judgment, order or decree appealed from if interlocutory, and within sixty days if final.

June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 1949, c. 139, Sec. 106, 63 St. 104.

APPENDIX C

CONSTITUTION OF THE UNITED STATES

Article XIV

Rights and Immunities of Citizens

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military under the United States, or under any state, who, having previously taken an oath,

as a member of Congress, or as an officer of the United States, or as a member of any state legislature, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debt incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt for rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Vol. II, O. S. 1931, p. 1613.

APPENDIX D

CONSTITUTION OF THE UNITED STATES

Article XV

Right to Vote

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Vol. II, O. S. 1931, p. 1614.

APPENDIX E

CONSTITUTION OF VIRGINIA of 1867

Article III

(Sections 1 and 2)

Section 1. Every male citizen of the United States, twenty-one years old, who shall have been a resident of this state twelve months, and of the county, city or town in which he shall offer to vote, three months next preceding any election shall be entitled to vote upon all questions submitted to the people at such election: Provided, that no officer, soldier, seaman or marine of the United States army or navy shall be considered a resident of this state by reason of being stationed therein; and provided also, that the following persons shall be excluded from voting:

"1st. Idiots and lunatics.

"2nd. Persons convicted of bribery in any election, embezzlement of public funds, treason or felony.

"3rd. No person who, while a citizen of this state, has, since the adoption of this constitution, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, either within or beyond the boundaries of this state, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to vote or hold any office of honor, profit or trust under this constitution.

Section 2. All elections shall be by ballot, and all persons entitled to vote shall be eligible to any office within the gift of the people, except as restricted in this constitution.

(Code of Virginia, 1873, p. 8 & 9.)

APPENDIX F

CONSTITUTION OF VIRGINIA OF 1867

Article XII

Any amendment or amendments to the constitution may be proposed in the Senate and House of Delegates, and if the same shall be agreed to by a majority of the members

elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the ayes and nees taken thereon, and referred to the General Assembly to be chosen at the next general election of senators and members of the House of Delegates, and shall be published for three months previous to the time of making such choice. And if, in the General Assembly so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people in such manner and at such times as the general assembly shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the general assembly voting thereon, such amendment or amendments shall become part of the constitution.

At the general election to be held in the year 1888, and in each twentieth year thereafter, and also at such time as the general assembly may by law provide, the question "Shall there be a convention to revise the constitution and amend the same?" shall be decided by the electors qualified to vote for members of the general assembly; and in case a majority of the electors so qualified voting at such election shall decide in favor of a convention for such purpose, the general assembly at its next session shall provide by law for the election of delegates to such convention: Provided that no amendment or revision shall be made which shall deny or in any way impair the right of suffrage or any civil or political right as conferred by this constitution, except for causes which apply to all persons and classes without distinction.

(Code of Virginia, 1873, p. 32)

APPENDIX G

ACT OF CONGRESS ADMITTING VIRGINIA TO REPRESENTATION IN CONGRESS

(United States Statutes at Large 16, p. 62, 41st Congress, 1869-71)

Whereas the people of Virginia have framed and adopted a Constitution of State government which is republican, and

whereas the Legislature of Virginia elected under said Constitution have ratified the fourteenth and fifteenth amendments to the Constitution of the United States; and whereas the performance of these several acts in good faith was a condition precedent to the representation in Congress:

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the said State of Virginia is entitled to representation in the Congress of the United States: provided, that before any member of the legislature of said State shall take or resume his seat, or any officer of said State shall enter upon the duties of his office, he shall take, and subscribe, and file in the office of the Secretary of State of Virginia, for permanent preservation, an oath in the form following: "I . . . , do solemnly swear that I have, by Act of Congress of the United States, been relieved from the disabilities imposed upon me by the fourteenth amendment of the Constitution of the United States, so help me God;" which oath shall be taken before and certified by any officer lawfully authorized to administer oaths.

Any person who shall knowingly swear falsely in taking either of such oaths shall be deemed guilty of perjury, and shall be punished therefor by imprisonment of not less than one year, and not more than ten years, and shall be fined not less than one thousand dollars, and not more than ten thousand dollars. And in all trials for any violation of this Act the certificate of the taking of either of said oaths, with proof of the signature of the party accused, shall be taken and held as conclusive evidence that such oath was regularly and lawfully administered by competent authority; And provided further that every such person who shall neglect for the period of thirty days next after the passage of this act to take, subscribe and file such oath as aforesaid, shall be deemed and taken, to all intents and purposes, to have vacated his office;

And provided further that the State of Virginia is admitted to representation in Congress as one of the States of the Union upon the following fundamental conditions:

First, that the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of

citizens of the United States of the right to vote who are entitled to vote by the Constitution herein recognized, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all the inhabitants of said State: Provided, that any alteration of said Constitution, prospective in its effects, may be made in regard to the time and place of residence of voters.

Second, that it shall never be lawful for the said State to deprive any citizen of the United States, on account of his race, color, or previous condition of servitude of the right to hold office under the Constitution and laws of said State, or upon any such ground to require of him any other qualifications for office than such as are required of all other citizens.

Third, that the Constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the schools, rights and privileges secured by the Constitution of said State.

(United States Statutes at Large 16, p. 62,
41st Cong., 1869-71)

APPENDIX H

CHAPTER VII, OF THE CODE OF VIRGINIA OF 1873

(Enacted by General Assembly in session of 1869-70)

Section 1. Every male citizen of the United States twenty-one years old, who shall have been a resident of this State for twelve months, and of the county, city or town in which he shall offer to vote, three months next preceding any election, and who is a registered voter in and a resident of, the election district in which he offers to vote, shall be entitled to vote upon all questions submitted to the people at such election: provided, that no officer, soldier, seaman or marine of the United States Army or Navy, shall be considered a resident of this State, by reason of being stationed therein; and provided also, that the following persons shall be excluded from voting:

First. Idiots and lunatics.

Second. Persons convicted of bribery in any election, embezzlement of public funds, treason or felony.

Third. No person who, while a citizen of this state has, since the adoption of the present constitution of this state, fought a duel with a deadly weapon, sent or accepted a challenge to fight a duel with a deadly weapon, whether within or beyond the boundaries of this state, or knowingly conveyed a challenge, or aided or assisted in any manner in fighting a duel, shall be allowed to vote.

Section 2. The judge of the county and hustings court of each county, city and town of this commonwealth, immediately after the first election and qualification of the said judges under the constitution, and every second year thereafter, counting from January, eighteen hundred and seventy, at the January term of their respective courts, shall appoint a registrar for each township, ward and voting place of their respective counties, cities and towns, who shall be a discreet citizen, and resident of the township or ward to which appointed: provided, however, that for every ward containing over one thousand voters, the said judge shall appoint one registrar for every thousand voters, and one for every fractional part of a thousand above five hundred, and there shall be at least as many voting places in each ward as registrars for such ward.

Section 3. When any vacancy shall occur in the office of registrar, the judge of the county or hustings court shall have the power at any time to fill the same; and if from any cause the registrar shall be unable to discharge the duties of his office, the said Judge shall have power to appoint one pro tempore in his stead.

Section 4. Each registrar so appointed and qualified, as hereinafter provided, shall register all male citizens of his election district who shall apply to *ge* registered, and who shall be of the age of twenty-one years at the first election to be held after the registration, and who are citizens of the United States, and shall have resided in the State twelve months, and in the county, city or town in which they propose to register, three months next preceding any election at which they may offer to vote; provided that no officer, soldier, seaman or marine of the United

States army or navy shall be considered a resident of the state by reason of being stationed therein; and provided, also, that idiots and lunatics, persons convicted of bribery in any election, embezzlement of public funds, treason, or felony, and any person who while a citizen of this state, has, since the adoption of the present constitution, fought a duel with a deadly weapon, either within or beyond the boundaries of this state, or knowingly conveyed the challenge, or assisted in any manner in fighting a duel, shall not be registered as voters; and provided further, that in the event that any person claiming to be a naturalized citizen of the United States shall not be able to establish the date of his papers, or the court in which they were issued, by reason of his having lost the same, or for any other cause, then his oath or affirmation to the fact that he has been duly naturalized shall be accepted, and shall entitle him to register.

Section 9. Each registrar shall, annually, on the second Tuesday in May, at his voting place, proceed to register the names of all the qualified voters within his voting district, not previously registered in the said district, in accordance with the provisions of this act, who shall apply to be registered, commencing at sunrise and closing at sunset, and shall complete such registration on the second Tuesday in May. Ten days previous to the November elections, the registrar shall sit one day for the purpose of amending and correcting the list, at which time any qualified voter applying, and not previously registered, may be added: provided, that in each city or town having more than two thousand inhabitants, the registrar may sit three days previous to any state, city, county or township election. The registrars shall give notice of the time and place of all registrations for at least ten days before each sitting, by posting written or printed notices thereof at ten or more public places in their townships, wards and election districts. And the registrar shall, at any time previous to the regular days of registration, register any voter who may apply to him to be registered, and who will be entitled to vote at the next succeeding election; and the registrar shall receive the same compensation for the names so registered on days other than the regular days of registration,

that assessors may be entitled to for listing births and deaths. It shall be the duty of the registrars, within five days after each sitting, to have posted at three or more public places in their townships, wards and election districts, written or printed lists of all persons admitted by them to registration, and also to have written or printed lists of all such persons added, posted on each day of election at each place of voting in their townships, wards and election districts.

(Code of Virginia of 1873, Chapter VII, p. 146-147; Acts 1869-70 c. 76, Sec. 21, p. 81)

APPENDIX I

Constitution of Virginia of 1902

Article II

Section 18. *Qualification of voters*—Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the general assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has removed until the expiration of thirty days after such removal.

The right of citizens to vote shall not be denied or abridged on account of sex.

Section 19. *Registration of voters; those registered prior to nineteen hundred and four.*

Persons registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, whose names were required to be certified by the officers of registration for filing,

record and preservation in the clerk's offices of the several circuit and corporation courts, shall not be required to register again, unless they shall have ceased to be residents of the State, or became disqualified by section twenty-three.

SECTION 20. *Who may register.*—Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided

First. That he has personally paid to the proper officer all state poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register; or, if he come of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax assessable against him; and,

Second. That unless physically unable he make application to register in his own handwriting, without aid, suggestion or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the State, county and precinct in which he voted last; and

Third. That he answer on oath any and all questions affecting his qualifications as an elector, submitted to him by the registration officer, which questions, and his answers thereto, shall be reduced to writing, certified by the said officer, and preserved as a part of his official records.

SECTION 21. *Conditions for voting.*—A person registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, or under the last section, shall have the right to vote for all officers elective by the people, subject to the following conditions:

That unless exempted by section twenty-two, he shall as a prerequisite to the right to vote, personally pay, at least

six months prior to the election, all poll taxes assessed or assessable against him, under this Constitution, during the three years next preceding that in which he offers to vote.

If he shall have registered after the first day of January, nineteen hundred and four, he shall, unless physically unable, prepare and deposit his ballot, without aid, on such printed form as the law may prescribe, but any voter registered prior to that date may be aided in the preparation of his ballot by such officer of election as he himself may designate.

SECTION 22. *Persons exempt from payment of poll tax as a condition of right to vote.*—No person, nor the wife or widow of such person who, during the late war between the States, served in the army or navy of the United States, of the Confederate States, or of any State of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. The collection of the State poll tax assessed against anyone shall not be enforced by legal process until the same has become three years past due.

SECTION 23. *Persons excluded from registering and voting.*—The following persons shall be excluded from registering and voting: idiots, insane persons and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting by conviction of crime, either within or without the State, and whose disabilities shall not have been removed; persons convicted after adoption of this Constitution, either within or without this State, of treason or of any felony, bribery, petit larceny, obtaining money or property under false pretences, embezzlement, forgery or perjury; persons who while citizens of this State, after adoption of this Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such a duel, either within or without this State, or knowingly conveyed such a challenge or aided or assisted in any way in the fighting of such duel.

(Vol. 9, Michie's Code of Virginia, 1950, p. 448-452).

APPENDIX J

THE VIRGINIA TAX CODE, Chapter 5

Section 22. Levy of State Capitation Tax.—There is hereby levied a State Capitation Tax of one dollar and fifty cents per annum on every resident of the State not less than twenty-one years of age, except those pensioned by this State for military service; one dollar of which shall be applied exclusively in aid of the public free schools, in proportion to the school population, and the residue shall be returned and paid by the State into the treasury of the county or city in which it was collected, to be appropriated by the proper county or city authorities to such county or city purposes as they shall respectively determine; but said capitation tax shall not be a lien upon, nor collected by legal process from, the personal property which may be exempt from levy or distress under the poor debtor's law. Notwithstanding any of the provisions of Section six and four hundred and twenty-four of the Tax Code, or any other provisions of law, the said capitation tax of one dollar and fifty cents per annum is hereby levied upon every person not less than twenty-one years of age who moves into Virginia and becomes a resident, regardless of whether he was a resident on the first day of January of said year, or became a resident thereafter during the said year.

(Code of Virginia, 1950, Title 58, Taxation, p. 349-350; Constitution, Section 173, 150, p. 542.)

ARTICLE VI, UNITED STATES CONSTITUTION (Vol. II, O. S. 1931, p. 1608)

"Article VI.

* * * * * * *

"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and

the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."

* * * * * * *

7th Amendment, United States Constitution (Vol. II, O. S. 1931, p. 1611)

"In suits at Common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

United States Code, Title 8—Chapter 2, Elective Franchise

"Section 31. Race, Color, or Previous Condition not to Affect Right to vote.—All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; and constitution, law, custom, usage, or regulation of any State, or Territory, or by or under its authority, to the contrary notwithstanding." (R. S., Sec. 2004).

United States Code, Title 8—Chapter 3, Civil Rights

"Section 43. Civil Action for Deprivation of Rights.—Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress." (R. S. Sec. 1979).

TITLE 28, U. S. C., Sec. 41 (Mason Code, Vol. 2, p. 1972):

"Section 41. (Judicial Code, Section 24, Amended.) Original Jurisdiction.

The district courts shall have original jurisdiction as follows:

"(1) United States as plaintiff; civil suits at common law or in equity.—First. Of all suits of a civil nature, at common law or in equity * * * or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, * * *. The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. (R. S. Secs. 563, 629; Mar. 3, 1875, c. 137, Sec. 1, 18 Stat. 470; Mar. 3, 1887, c. 373, Sec. 1, 24 Stat. 552; Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433; Mar. 3, 1911, c. 231, Sec. 24, 36 Stat. 1091)".

Title 28, U. S. C., Sec. 41, Subdivision (14) (Vol. 2, Mason p. 1991, defining jurisdiction of District Courts):

* * * * * * *

"(14) Suits to redress deprivation of civil rights.—Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States, providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (R. S. Sec. 563, par. 12, Sec. 629, par. 16; Mar. 3, 1911, C. 231, Sec. 24, par. 14, 36 Stat. 1092.)"

MAY 28, 1951.

Per Curiam Decisions.

No. 713. BUTLER *v.* THOMPSON, CENTRAL REGISTRAR FOR THE COUNTY OF ARLINGTON, ET AL. Appeal from the United States District Court for the Eastern District of Virginia. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. MR. JUSTICE DOUGLAS dissents. *John Locke Green* for appellant. *J. Lindsay Almond, Jr.*, Attorney General of Virginia, *Walter E. Rogers* and *John W. Jackson* for appellees. Reported below: 97 F. Supp. 17.